

BEFORE THE PUBLIC UTILITIES COMMISSION
STATE OF SOUTH DAKOTA

<i>In the Matter of the Application by</i>)	
CROWNED RIDGE WIND II, LLC <i>for a</i>)	Docket EL19-027
<i>Permit of a Wind Energy Facility in</i>)	
<i>Deuel, Grant and Codington Counties</i>)	

WITNESS AND EXHIBIT LIST
OF
INTERVENORS GARRY EHLEBRACHT, ET AL.

UNDERSIGNED, as counsel for Intervenor Garry Ehlebracht, Steven Greber, Mary Greber, Richard Rall, Amy Rall and Laretta Kranz, now submit their list of intended witnesses and exhibits during the course of hearing before this Commission:

<i>Witnesses:</i>	<i>Exhibit #</i>	<i>Title:</i>
Garry Ehlebracht	I-1	<i>Affidavit of Garry Ehlebracht</i>
Garry Ehlebracht	I-2	<i>Wind Farm Lease and Easement Agreement</i>
Garry Ehlebracht	I-3	<i>Application for Party Status (Corrected)</i>
Laretta Kranz	I-4	<i>Affidavit of Laretta Kranz</i>
Steven Greber	I-5	<i>Affidavit of Steven Greber</i>
Amy Rall	I-6	<i>Affidavit of Amy Rall</i>

Additionally, Intervenor request the Commission take official or judicial notice of the following matters, being published research papers or reports, readily available and downloadable from websites maintained by governmental or affiliated agencies, and that (a) pertain to the Commission’s expert witness in this case, Mr. David Hessler, as author, or (b) relate to the scope of delegated Zoning Power that Deuel County purports to have exercised in Applicant’s prior zoning case, and which, as to “Effects” (noise and Shadow Flicker) that may be placed upon these Intervenor, appears to directly bear also upon this Commission’s claim of legal authority to permit and regulate such matters when and as visited upon the properties and homes of Intervenor. Alternatively, if directed by the Commission, Intervenor will further mark each as an exhibit and submit to the Commission’s electronic docket:

- 1). “Assessing Sound Emissions from Proposed Wind Farms & Measuring the Performance of Completed Projects,” 2011, NARUC Grants & Research, David M. Hessler, Hessler Associates, Inc.
https://www.michigan.gov/documents/energy/MLUI9_NARUC_420200_7.pdf.

2). NARUC Grants & Research, January 2012, “Put It There! – Wind Energy & Wind-Park Siting and Zoning Best Practices and Guidance for States,” Tom Stanton, Principal for Electricity, National Regulatory Research Institute 12-03
<https://pubs.naruc.org/pub/FA8663AC-A840-E8B3-FC1D-C7AFEC3ED9D6>

Dated at Canton, South Dakota, this 27th day of January 2020.

Respectfully submitted,

A.J. Swanson
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/s/ A.J. Swanson
A.J. Swanson
State Bar of South Dakota # 1680

Attorney for,
GARRY EHLEBRACHT, STEVEN GREBER,
MARY GREBER, RICHARD RALL, AMY
RALL, and LARETTA KRANZ, *Intervenors*

BEFORE THE PUBLIC UTILITIES COMMISSION
STATE OF SOUTH DAKOTA

EXHIBIT I-1

IN THE MATTER OF THE APPLICATION OF)
CROWNED RIDGE WIND II, LLC FOR)
WIND ENERGY FACILITY IN) EL19-027
DEUEL, GRANT AND CODINGTON COUNTIES)

AFFIDAVIT OF GARRY EHLEBRACHT
17539 468TH AVE., GOODWIN, SOUTH DAKOTA 57238

State of South Dakota, County of Deuel: ss.

Garry Ehlebracht, being duly sworn on oath, deposes and says:

1 My name is Garry Ehlebracht. I purchased this property – then a bare tract – in 1993,
2 and have lived at the above-referenced address since 1999. The legal description for our
3 property is the **SOUTH 922' OF THE EAST 731' OF THE SOUTHEAST QUARTER**
4 **OF THE NORTHEAST QUARTER (SE1/4, NE1/4), LESS THE SOUTH 605' OF THE**
5 **WEST 97' OF THE EAST 731' THEREOF, IN SECTION 20, TOWNSHIP 116**
6 **NORTH, RANGE 50 WEST OF THE 5TH P.M., DEUEL COUNTY.**

7 My home is about two miles south of Goodwin. I presently own and operate Kliegles
8 Garage in Goodwin, and OR Machining and Repair. I have been employed by the US Postal
9 Service (Goodwin) since 2003, and still work as Postmaster Relief.

10 Goodwin, as a community, has been around for a long time – around 1878. It is
11 platted into lots, and has a population of around 150, but to the best of my knowledge, it is
12 not an incorporated municipality under Title 9 of SDCL. If incorporated, it would be a third-
13 class municipality with a population of under 500.

14 To the best of my knowledge, Goodwin does not exercise zoning power. Assuming it
15 is an incorporated municipality, I believe it is a very old one. I have a memo from counsel
16 addressing the statute, SDCL 11-2-14, uniformity in zoning regulations being required within
17 each district. If the towns of Goodwin, Astoria, Brandt and Altamont are incorporated, and
18 the city limits represent the dividing line for the “unincorporated” areas of the County, the
19 County’s adopted WES setback of 1 mile, measured from the “nearest residence,” seems to
20 be highly variable in all directions.

1 In 2017, the Deuel County Board adopted amendments to Section 1215 of the Zoning
2 Ordinance, concerning Wind Energy Systems (or WES). As amended, my home on 468th
3 Avenue is subject to this setback from WES (Section 1215.2.a):

4 **Distance from existing Non-Participating residences . . . shall be not less**
5 **than four times the height of the wind turbine.**

6 In the case of Crowned Ridge, it is my understanding the required setback from my home
7 will be about 1,950 feet, more or less.

8 Meanwhile, the homes within Goodwin itself are subject to a much more generous or
9 favorable setback (Section 1215.e):

10 **Distance from the municipalities Altamont, Astoria, Brandt and**
11 **Goodwin of 1 mile from the nearest residence . . .**

12 Likewise, there are several homes just outside of Goodwin who are pretty close to those
13 within Goodwin, so they will get the benefit of whatever a 1-mile setback proves to be from
14 their city neighbors. City limits are not the measuring point.

15 My home is in the same Zoning District as those near (but not necessarily *in*)
16 Goodwin. There is no logic for exposing my home to a setback minimum of about 1,950 feet,
17 while those in or near Goodwin are benefitted by a minimum of 1 mile. I believe this to be
18 an unlawful form of discrimination between properties in the same zoning district. The other
19 variations in setbacks within the County are just as odd, in my view.

20 Since acquiring this site on 468th Ave., I have undertaken many projects and spent a
21 considerable amount to improvements on this property. Back when I purchased the land, I
22 had an agreement drawn up with the seller, under which they committed not to create or
23 develop a concentrated animal feeding operation (CAFO) on the surrounding land. If I had
24 foreseen what is now happening to the Goodwin area, I would have included "wind turbines"
25 in that prohibition, too.

26 According to information provided by the Applicant's attorney, my property near
27 Goodwin is referenced in the Applicant's materials as CR2-D220-NP. According to Table
28 C-1 of Exhibit JH-S-2, "Final Report" prepared by Jay Haley, dated September 18, 2019, my
29 home will be located 2,211 feet from the nearest turbine (much less than the 1 mile setback
30 the Zoning Ordinance assures for homes in or near Goodwin), and I am targeted (predicted)
31 to receive 3:14 worth of Shadow Flicker annually. I understand that with 1 mile setbacks,

Affidavit of Garry Ehlebracht

1 Shadow Flicker is supposed to fade away as a problem – not so at 2,211 feet, however.
2 According to Exhibit JH-S-1, Table C-1, my home (CR2-D220-NP) will also receive sound
3 or noise of 42.1 or 43.6 dB(A). A greater distance reduces the sound, of course.

4 While these current predictions are believed to be somewhat better than what had
5 been given to Deuel County Board of Adjustment (which of these are correct – and are you
6 entirely sure, if reality proves otherwise?), I will provide four observations:

7 (1) I note many Participants in rural Deuel County will experience either a lesser
8 duration, or even no amounts of Shadow Flicker, as well as a reduced level of noise,
9 compared to my home;

10 (2) I have done nothing to encourage or invite an invasion of my home by either
11 of these “Effects” to be given off by Crowned Ridge II, and intend to continue to resist this
12 invasion;

13 (3) What Deuel County has done with the Special Exception Permit is to place a
14 servitude or burden upon my home, and this is done without my approval; and

15 (4) If Crowned Ridge was required to observe the same setback of one (1) mile as
16 pertains to Goodwin, as I believe is the intent of the law outlined in the Zoning Power (SDCL
17 11-2-14), the Shadow Flicker would be further reduced – if not entirely eliminated – and the
18 noise level would be much closer to what now exists in our quiet area (prior to wind farm
19 development work or operation of the “wind farm”).

20 I am familiar with the proposed “option for lease and easement” that was presented to
21 my neighbor, Laretta Kranz, by an agent for Crowned Ridge. I am familiar with the
22 language within the option, including the “Effects Easement” described in Section 5.2
23 (mentioning “noise” and “flicker” and “shadow”), and also Section 11.10, “Remediation of
24 Glare and Shadow Flicker.”

25 This document, to the best of my knowledge, was never presented to Deuel County
26 Board of Adjustment, nor were any of the “options” or actual “leases or easements” obtained
27 from Deuel County “Participants.” When presented to Mrs. Kranz, she gave it to me and
28 directed the agent to call me as her advisor. The agent then called me, and I proceeded to
29 inform him that I was not at all happy about the siting of the turbines, and that they should be
30 moved further away from homes. This Crowned Ridge agent laughed – and I told him to
31 never contact me again as I hung up on him.

1 Today, Crowned Ridge still intends – which is obvious from their plans and
2 projections, both to the County and to this Commission – to make use of my land and home,
3 and also of my several neighbors who, like me, object to this proposal. Some – like the
4 Grebers – appear to have exposure to an even greater length of Shadow Flicker and noise
5 levels than what these experts have “predicted” for my home. Regardless, none of this is
6 being carried out with my permission, and I have given no easement for the use of my land
7 and my home in this manner.

8 There does not appear to be any mechanism in the Zoning Ordinance, or the Decision
9 made by the Board of Adjustment, and I also expect this Commission will reserve no
10 meaningful supervision over the Crowned Ridge II operation so that, *if* these uninvited
11 elements or “Effects” of the wind farm prove to be a nuisance (a nuisance is an annoyance –
12 these experts seem rather dismissive of mere “annoyances” since they all claim they really
13 don’t lead to a “substantial impairment” of our health) we will at least be entitled to have
14 further resort to the Courts to protect ourselves. It is my belief, having been so advised by
15 counsel, that in issuing a Special Exception Permit, and also now this Facility Siting Permit,
16 each of which approves or gives official government blessing to Crowned Ridge’s
17 predictions of this or that on my land as “okay” or “fine,” our legal remedies for a nuisance
18 may have also been seriously undercut, if not entirely ruined.

19 This is why I am not willing to allow these “Effects” to come onto my property or to
20 invade my home. This predicted, proposed use is actually a trespass. And if this
21 Commission now approves this use, I find that would be part of a taking of or damage to my
22 property and will pursue my legal remedies accordingly. Neither this Commission, nor the
23 Deuel County Board of Adjustment, knows what is best for my land, or how to enjoy the
24 property. Neither agency has any real authority to approve or permit this adverse use as to
25 the property of a “Non-Participant.” If government plans or wishes to take my land by these
26 permits and approvals – or simply intends to just damage it – then government should be
27 prepared to pay for it.

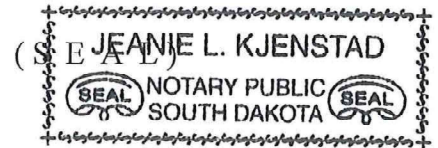

GARRY EHLEBRACHT

SUBSCRIBED AND SWORN TO BEFORE ME, A NOTARY PUBLIC IN AND FOR THE
STATE OF SOUTH DAKOTA, BY SAID GARRY EHLEBRACHT, PERSONALLY
KNOWN OR PROVEN TO ME TO BE SUCH PERSON, THE DATE ENTERED BELOW.

Date: Dec 2, 2019

Jeanie L. Kjenstad
NOTARY PUBLIC – SOUTH DAKOTA

My Commission Expires: 1/20/2023



WIND FARM LEASE AND EASEMENT AGREEMENT

1. **Parties.** This Wind Farm Lease and Easement Agreement ("**Agreement**") is made and entered as of the ____ day of _____, 2013 ("**Effective Date**"), by and between _____ (collectively, the "**Owner**"), and Crowned Ridge Wind Energy Center, LLC, a Delaware limited liability company, ("**Operator**") an affiliate of NextEra Energy Resources, LLC, a Delaware limited liability company. Owner and Operator are sometimes individually referred to as a "**Party**" and collectively as the "**Parties.**"

2. **Project.** This Agreement relates to the wind-powered electrical power generation and transmission project known as the "Crowned Ridge Wind Energy Center" to be located in Codington County and Deuel County, South Dakota ("**Wind Farm**"), which may be wholly or partially located on the Owner's property legally described on the attached **Exhibit A-1** to this Agreement ("**Owner's Property**"). Upon Operator's exercise of the Option (as defined below), the Wind Farm shall include (i) the Leases referenced in Section 4 that are located on the Owner's Property; (ii) the Easements granted in Section 5, and (iii) the Improvements to be constructed on Owner's Property referenced in Section 8. The Leases, Easements and Improvements are sometimes collectively referred to as the "**Operator Property.**"

3. **Option.** Owner grants to Operator an exclusive option ("**Option**") to acquire the Leases and Easements referenced in Sections 4 and 5 in accordance with the following terms and conditions. Operator shall be entitled to acquire the Lease and the Easements in their entirety or in part, as Operator deems appropriate.

3.1 **Option Term.** The initial period during which Operator may exercise the Option shall be for a term of thirty-six (36) months, commencing on the Effective Date and expiring on the date immediately preceding the third (3rd) anniversary of the Effective Date ("**Initial Option Term**"). Operator shall have a single election to extend the Initial Option Term for an additional twenty-four (24) months ("**Extended Option Term**") by written notice to Owner at any time prior to the third (3rd) anniversary of the Effective Date, which notice shall be accompanied by the Option Extension Payment (as defined in Section 3.2). References herein to the Option Term shall mean the Initial Option Term and, to the extent exercised by Operator, also the Extended Option Term, unless expressly stated otherwise.

3.2 **Option Payment.** As initial consideration for the granting of the Option, Operator agrees to pay Owner the sum of One Thousand Dollars (\$1,000.00) ("**Option Payment**") within sixty (60) days after the Effective Date. Additionally, Operator shall pay Owner the sum of One Thousand Dollars (\$1,000.00) per year on or before each anniversary of the Effective Date during the Option Term unless Operator elects to discontinue the Option. If Operator wishes to extend the Initial Option Term, Operator shall give Owner written notice thereof and pay Owner the sum of One Thousand Dollars (\$1,000.00) ("**Option Extension Payment**") before the end of the Initial Option Term. Thereafter, Operator shall pay to Owner the sum of One Thousand Dollars (\$1,000.00) per year throughout the Extended Option Term on each subsequent anniversary of the Effective Date. If Operator shall fail to timely make the initial payment required within sixty (60) days of the Effective Date and/or any subsequent payment throughout the Option Term, Owner shall provide written notice to Operator of

Operator's failure and Operator shall have the opportunity to cure such failure in the manner prescribed in Section 18.

3.3 **Use of Owner's Property.** During the Option Term, Operator and its employees, agents and contractors shall have a non-exclusive right to enter upon the Owner's Property and the right of ingress and egress over and across the Owner's Property for the purposes of (i) surveying the Owner's Property; (ii) performing such other tests and studies as Operator may desire in connection with the Option, including, without limitation, environmental, avian and cultural resource assessments, threatened or endangered species assessments, and geotechnical, foundation and soil tests; provided that such activities do not unreasonably interfere with Owner's use of the Owner's Property as set out in Section 11.3.; and (iii) installing, maintaining, operating, inspecting and removing one or more wind monitoring devices and all associated activities (including the Met Towers referenced in Section 8.3), and including the performance of all tests and studies associated therewith. Owner shall not permit any other individual or entity except Operator or its affiliates to install a Met Tower on Owner's Property.

3.4 **Right to Grant Option.** Owner warrants and represents to Operator that (i) the statements in Section 9 concerning Owner's title to the Owner's Property are true and correct; (ii) Owner has the authority to grant this Option to Operator without the consent or approval of any other party; and (iii) there are no other existing options, rights of first refusal, contracts to purchase, leases or mortgages that would prevent Operator from exercising its rights with respect to the Option.

3.5 **Exercise of Option.** Operator may exercise the Option by giving written notice to Owner ("**Option Notice**") at any time during the Option Term. Operator shall specify in the Option Notice the Commencement Date referenced in Section 6.1.1. Along with the Option Notice, Operator shall deliver to Owner a proposed plan of development showing the contemplated locations and routes of the Improvements, which shall serve as the **Exhibit B** to this Agreement. On the Commencement Date, the Leases and Easements referenced in Sections 4 and 5 shall automatically become effective, and Operator and Owner shall be subject to all of the terms and conditions of this Agreement with respect to such Leases and all rights and obligations relating thereto. If Operator only exercises the Option for a portion of the Owner's Property, then the Option granted herein shall remain in full force and effect for any other portion of the Owner's Property that was not included in the Option Notice.

3.6 **Termination of Option.** If Operator fails to exercise the Option within the Option Term, the Option and the rights of Operator as the optionee shall automatically terminate.

4. **Leases.** Effective upon the exercise of the Option by Operator, Owner grants to Operator, and Operator then accepts from Owner, for the Term referenced in Section 6.1, the following leases over and across the Owner's Property in accordance with the terms and conditions of this Agreement. The following leases are for the benefit of Operator and Operator's agents, contractors and employees and located on the Owner's Property and are collectively referred to as the "**Leases.**"

4.1 **Construction Right.** (a) Owner grants Operator rights for purposes of constructing, operating, maintaining, repairing, replacing, and removing all or any part or component of the Improvements whether located on or off Owner's Property. This construction

right is referred to as the "**Construction Right**" and the property subject to the burden of this Construction Right is referred to as the "**Construction Property**." Operator may exercise its right to use all or any part of the Construction Property as and when Operator deems it necessary or advisable to do so to perform the activities for which this Construction Right is granted, including, without limitation, constructing, operating, maintaining, repairing, replacing, and removing laydown areas, staging areas, crane pads and parking for Operator's employees. After each use of the Construction Right, Operator to the extent reasonably possible shall restore the Construction Property to the condition it was in before Operator's use.

(b) When installing, maintaining or removing the nacelle and rotor from any Turbine, whether located on or off of Owner's Property, this Construction Right also shall permit Operator to: (1) (for the purpose of securing tag lines) travel on foot or in a pickup truck, SUV, small forklift or other similar vehicles onto Owner's Property up to seven hundred (700) feet in any direction from the center of the Construction Property; and (2) drive an erection crane on Owner's Property and make use of earthmoving equipment for purposes of building suitable access routes for such crane. Operator shall be permitted to maintain a 120 foot by 40 foot crane pad at each Turbine Site Property (hereinafter defined) on Owner's Property for purposes of constructing and maintaining the Wind Farm.

4.2 **Access Right.** (a) Owner grants Operator the right of access over the Owner's Property for unobstructed vehicular, equipment and pedestrian ingress to and egress from the Improvements, the Construction Property, the Turbine Site Property, the Collection Property, the Overhang Property, and the Met Tower Property, whether located on or off Owner's Property. This right of access is referred to as the "**Access Right**" and the property subject to the burden of this access right is referred to as the "**Access Property**." Operator shall have the right to travel over, across and along the Access Property by means of existing roads and lanes, and by roads Operator or Owner may construct or improve from time to time on, over, and across the Owner's Property.

(b) Owner reserves the right to use all roads on the Access Property provided, however, that Owner shall not and shall not permit others to obstruct or damage the roads or in any other way interfere with Operator's rights under this Access Right.

4.3 **Turbine Site Lease.** Owner grants Operator a lease to construct, operate, replace, relocate, remove, and maintain a Turbine, Collection Facilities, together with associated roads and parking areas on Owner's Property. This grant is referred to as the "**Turbine Site Lease**" and each Turbine site so leased is referred to as a "**Turbine Site Property**."

4.4 **Collection Lease.** Owner grants Operator a lease for the construction, operation, maintenance, replacement, relocation or removal of Collection Facilities on and under the Owner's Property. This grant is referred to as the "**Collection Lease**" and the property so leased is referred to as the "**Collection Property**."

4.5 **Telecommunication Facilities Lease.** Operator leases Owner's Property for Operator to construct, operate, maintain, replace, relocate or remove Telecommunication Facilities (hereinafter defined) on, over, across, along and under the Owner's Property.

4.6 **Overhang Right.** Owner grants Operator the right and privilege to permit the rotors of Turbines located on adjacent properties to overhang a portion of the Owner's Property. This right is referred to as the "Overhang Right" and the property subject to the Overhang Right is referred to as the "Overhang Property". Owner shall not interfere with the operation of Turbine rotors that overhang the Overhang Property.

4.7 **Met Tower Lease.** Owner grants Operator a lease to construct, operate, replace, relocate, remove, and maintain a Met Tower and Collection Facilities on Owner's Property. This grant is referred to as the "Met Tower Lease" and each Met Tower site so leased is referred to as a "Met Tower Property."

5. **Easements.** Upon the exercise of the Option by Operator, Owner grants to Operator, and Operator accepts from Owner, for the Lease and Easement Term referenced in Section 6.1, the following easements over and across the Owner's Property in accordance with the terms and conditions of this Agreement. The following easements are for the benefit of Operator and Operator's agents, contractors and employees, are located on the Owner's Property and are collectively referred to as the "Easements."

5.1 **Wind Non-Obstruction Easement.** (a) Owner grants Operator an irrevocable, exclusive easement for the right and privilege to use, maintain and capture the free and unobstructed flow of wind currents over and across the Owner's Property ("Wind Non-Obstruction Easement"). Along with the Option Notice, Operator shall deliver to Owner the following legal descriptions which shall become Exhibit A-2 of this Agreement: (a) a description of the Wind Non-Obstruction Easement property subject to this Agreement; (b) a description of the Wind Non-Obstruction Easement in vertical and horizontal angles; and (c) a description of real property benefiting from the Wind Non-Obstruction Easement. Owner shall not engage in any activity on Owner's Property that might interfere with wind speed or wind direction over any portion of any Turbine or Met Tower Easement Properties, whether located on or off the Owner's Property; cause a decrease in the output or efficiency of any Turbine or accuracy of any meteorological equipment; or otherwise interfere with Operator's operation of the Wind Farm or exercise of any rights or the Leases granted in this Agreement ("Interference"). Owner reserves the right to erect structures on Owner's Property in compliance with all applicable laws and ordinances except as specifically limited in this Agreement. Owner must consult with and obtain Operator's prior written approval as to the location of all structures greater than forty (40) feet in height located one thousand (1000) feet or less from any Turbine or Met Tower. Approval shall be based on whether, in Operator's sole judgment, informed by appropriate professional engineering and meteorological opinions, the proposed structures at the proposed location are likely to cause Interference.

(b) This grant of easement of the Wind Non-Obstruction Easement expressly includes the right of Operator to enter on any part of Owner's Property to enforce Operator's rights, including the physical removal of trees or structures (except existing trees and structures) causing Interference to the project contemplated by Operator. Operator shall consult with Owner before making any such removals.

5.2 **Effects Easement.** Owner grants to Operator a non-exclusive easement for audio, visual, view, light, flicker, noise, shadow, vibration, air turbulence, wake, electromagnetic, electrical and radio frequency interference, and any other effects attributable to

the Wind Farm or activity located on the Owner's Property or on adjacent properties over and across the Owner's Property ("**Effects Easement**").

6. **Term of Agreement.** The term of this Agreement ("**Term**") includes the Option Term referenced in Section 3.1; and the Easement Term referenced in Section 6.1.

6.1 **Lease & Easement Term.**

6.1.1 **Lease & Easement Term.** The Term of the Leases and Easements and the effective date thereof shall commence on the date specified by Operator in the Option Notice ("**Commencement Date**"). The Term shall end fifty (50) years after the Commencement Date, unless terminated as provided in this Agreement.

6.1.2 **Delays During Easement Term.** At Operator's option, the Term may be extended for a period of time equal to the period of time during which operation of the Wind Farm is delayed or suspended because of the occurrence of a Regulatory Suspension or Force Majeure, which are defined as follows:

(i) "**Regulatory Suspension**" shall mean the enactment or application of any law, order, rule, or regulation of the South Dakota Public Utilities Commission, Federal Energy Regulatory Commission, or other local, state, or federal government authority having jurisdiction over the Wind Farm or Operator, or the failure of any such governmental authority to issue an approval or permit pursuant to any such law, order, rule, or regulation, which results in the delay, interruption, or suspension of the production, sale or transmission of electricity from the Turbines; and

(ii) "**Force Majeure**" shall mean causes beyond the reasonable control of and without the fault or negligence of the Party claiming Force Majeure, including but not limited to acts of God, labor unrest (including, but not limited to, slowdowns, picketing, boycotts or strikes), flood, earthquake, storm, fire, lightning, explosion, power failure or power surge, vandalism, theft, the cutting of power, transmission or other lines, wires or cables to the Wind Farm by persons other than Wind Farm employees, epidemic, war, revolution, riot, civil disturbance, sabotage, change in law or applicable regulation subsequent to the Commencement Date and action or inaction by any federal, state or local legislative, executive, administrative judicial agency or body which in any of the foregoing cases, by exercise of due foresight such Party could not reasonably have expected to avoid, and which, by the exercise of due diligence, it is unable to overcome.

The Parties shall be excused from performing their respective obligations under this Agreement and shall not be liable in damages or otherwise if and to the extent that they are unable to so perform or are prevented from performing by a Force Majeure, provided that: (i) the non-performing Party, as promptly as practicable after the occurrence of the Force Majeure, but in no event later than thirty (30) days thereafter, gives the other Party written notice describing the particulars of the occurrence; (ii) the suspension of performance is of no greater scope and of no longer duration than is reasonably required by the Force Majeure; (iii) the non-performing Party uses good faith and commercially reasonable efforts to remedy its inability to perform; and (iv) as soon as the non-performing Party is able to resume performance of its obligations excused as a result of the occurrence, each party shall give prompt written notification thereof to the other Party.

6.2 **Termination by Operator.** Operator, at its option, shall have the right to terminate this Agreement at any time during the Term of the Agreement, as to all or any part of the Operator Property. Termination shall be effective thirty (30) days after written notice of such termination to Owner. If Operator's notice is a full termination of the Operator Property, the Parties shall be relieved of all further duties and obligations under this Agreement, other than (i) the payment of any accrued and unpaid obligations owed by either Party as of the date of termination; (ii) the removal of the Improvements by Operator pursuant to Section 8.9; and (iii) any other obligations and liabilities that are expressly stated in this Agreement to survive such termination. Upon any such partial termination by Operator, the Parties shall be relieved of all further duties and obligations under this Agreement with respect to the portion thereof terminated by Operator, subject to the obligations and liabilities referenced in items (i) through (iii) above that shall continue to be applicable to the terminated portion of this Agreement. Owner and Operator agree to execute an amendment to this Agreement evidencing such partial termination.

7. **Payments.** If Operator exercises the Option referenced in Section 3, Operator agrees to pay Owner the amounts set forth in **Exhibit D** as consideration for the Leases and Easements and Operator's other rights and interests in the Owner's Property.

8. **Improvements.** Operator shall have the right, at its sole cost and expense, to construct, install, maintain, use, operate, repair, replace, relocate and remove all facilities, structures, equipment, machinery, wires, conduit, cables, poles, materials and property of every kind and character required for the construction and operation of portions of the Wind Farm on the Owner's Property, including, but not limited to, the Turbines, Collection Facilities, Met Towers, and Roadway Improvements referenced in Sections 8.1 through 8.5 (collectively, the "Improvements").

8.1 **"Turbines"** shall mean any wind turbine generator or wind machine designed for the generation of electrical power from wind power, including without limitation, the associated towers, support structures, guy wires, braces and directly related equipment.

8.2 **"Collection Facilities"** shall mean all Improvements whose purpose is to deliver electrical power generated by the Turbines to an electrical power grid or other system, including without limitation transformers and overhead and underground electrical collection lines and interconnection facilities.

8.3 **"Telecommunication Facilities"** shall mean all Improvements whose purpose is to provide telecommunication services solely relating to Operator's wind powered projects, including telephone, closed-circuit television, radio, microwave, internet, computer data and other telecommunication services.

8.4 **"Met Tower"** shall mean towers used primarily to gather and transmit meteorological data relating to the Wind Farm, and includes the tower's foundations, guy wires, meteorological data acquisition equipment, power source, and any required data and electrical transmission lines.

8.5 **"Roadway Improvements"** shall mean all improvements that may be necessary to construct, maintain and repair any new and existing roadways, driveways, gates and other means of ingress and egress over, across and along the Access Property, including paving or surfacing of the roadways with asphalt, gravel or other roadway materials, and the construction and installation of culverts, bridges, drainage ditches, gates, cattle guards and similar structures and facilities.

8.6 **Ownership of Improvements.** All Improvements shall at all times remain the property of Operator, and Owner shall have no right, title or interest therein. All Improvements constructed or placed on the Owner's Property by Operator during the Term of this Agreement may be repaired, replaced, relocated, removed, added to or expanded upon by Operator at any time during the Term of this Agreement. Owner expressly waives any statutory lien or common law liens on the Improvements to which Owner might be entitled.

8.7 **Construction Liens.** Operator shall not permit any liens arising out of Operator's use of the Operator Property under this agreement to be filed against the Operator Property. Operator shall, within sixty (60) days after it receives notice of the lien, provide a bond or other security that Owner may reasonably request, or remove such lien from the Operator Property in the manner provided by applicable law.

8.8 **Location of Improvements.** The locations and routes of the Improvements for which the Leases and Easements are being granted cannot be determined until the completion of Operator's inspection, testing, study and surveying of the Owner's Property during the Option Term. Owner and Operator acknowledge and agree that the location and routes of the Improvements may need to be relocated or rerouted by Operator, at any time during the Term of this Agreement, so long as the nature and extent of any such relocated or rerouted Improvements are not materially different and impose no greater burden on the Owner's Property than the original locations or routes and Operator takes appropriate actions to minimize any disruption or inconvenience to Owner and the uses of the Owner's Property reserved to Owner in Section 11.3. Following construction of the Wind Farm, Operator shall provide Owner an "as-built" survey of all Improvements on Owner's Property, which shall serve as **Exhibit C** to this Agreement.

8.9 **Removal of Improvements.** Upon full or partial termination of any of the Leases or Easements, Operator shall remove all physical material pertaining to the Improvements from the affected Operator Property to a depth of thirty-six inches (36") beneath the soil surface, and restore the area formerly occupied by the Improvements to substantially the same physical condition that existed immediately before the construction of the Improvements (the "**Removal Obligations**"). If Operator fails to complete its Removal Obligations within twelve (12) months of full or partial termination of the applicable Lease or Easement, Owner may do so, in which case Operator shall reimburse Owner for costs of fulfilling Operator's Removal Obligations incurred by Owner.

9. **Ownership and Title Matters.** Owner warrants and represents to Operator, both as of the Effective Date, and as of the Commencement Date as follows:

9.1 **Authority.** Owner is the sole owner of the Owner's Property including the Operator Property and has the unrestricted right and authority to sign this Agreement and to

grant Operator the Leases and Easements and other rights granted in this Agreement. When signed by both parties, this Agreement constitutes a valid and binding agreement enforceable against Owner in accordance with its terms.

9.2 **Other Agreements.** The Owner's Property is not subject to any other agreements, options, rights of first refusal or other prior right of any party to purchase, lease or acquire leases and easements in the Owner's Property, or create any prior claim or right that would preclude or interfere with Operator's rights and interests under this Agreement and the Leases and Easements.

9.3 **Minerals.** Except as otherwise disclosed in writing by Owner to Operator at the time of the execution of this Agreement by Owner, Owner owns all of the oil, gas and other minerals, and all rights thereto as exist on or under the Owner's Property.

9.4 **Owner Mortgage.** Except as disclosed in writing by Owner to Operator at the time of the execution of this Agreement by Owner, there are no mortgages encumbering the Owner's Property ("**Owner Mortgage**").

9.4.1 **Notice and Opportunity to Cure.** If there is an Owner Mortgage encumbering Owner's Property and Owner receives from the holder thereof ("**Owner Mortgage**") any notice that payments are overdue, Owner shall notify Operator and each Operator Mortgagee (as defined at Section 13.1) by sending a copy of such overdue payment notice to Operator by the earlier of (i) five (5) days after receipt, or (ii) three (3) business days prior to the date by which a default under or in respect of such Owner Mortgage could occur. If Operator or any Operator Mortgagee determines that it would be in Operator's interest to make such payments to Owner Mortgagee on Owner's behalf, whether as a result of receiving such notice or otherwise, Operator shall have the right to make such payments and to credit the payments so made against the Annual Installment Payment next due under the Agreement.

9.4.2 **Subordination, Non-Disturbance and Attornment Agreement.** Within thirty (30) days after Owner receives the Option Notice, Owner shall deliver to Operator an executed and duly acknowledged Subordination, Non-Disturbance and Attornment Agreement ("**SNDA**") in the form prepared and provided by Operator, from each Owner Mortgagee, pursuant to which such Owner Mortgagee agrees, among other things, not to disturb Operator's possession and use of the Owner's Property. Operator shall, at its sole cost and expense, record each such SNDA in the Official Records of the County in which Owner's Property is located. If Owner fails to deliver a SNDA from each Owner Mortgagee, Operator may, at its sole option, either (i) terminate this Agreement immediately upon written notice to Owner, or (ii) take such action as Operator deems reasonably necessary to effect the rights granted to Operator hereunder, including, without limitation, contacting the Owner Mortgagee directly, and off-set all amounts expended in such efforts against the Annual Installment Payments and any other amounts due hereunder or in respect hereof.

10. **Representations and Warranties of Owner.** Owner hereby makes the following further representations and warranties:

10.1 **Physical Condition.** Owner has no actual knowledge of any existing physical conditions of the Owner's Property which would prevent, significantly restrict or make more

expensive Operator's development of the Owner's Property for the purposes specified in this Agreement, or which could, with the passage of time, or the giving of notice, constitute a violation of any currently applicable governmental law, ordinance, order, rule or regulation.

10.2 **Legal Restrictions.** Without having made any specific investigation thereof, and without undertaking to do so, Owner has no actual knowledge of any law, regulation, ordinance or order of, or agreement with, any local, state or federal governmental authority which would prohibit or significantly restrict Operator's development of the Owner's Property pursuant to this Agreement. This Agreement does not violate any contract, agreement, instrument, judgment or order to which Owner is a party or which affects the Owner's Property. To the best of Owner's knowledge, the Owner's Property is currently in full and complete compliance with all governmental laws, ordinances, orders, rules and regulations applicable to the Owner's Property.

10.3 **No Litigation.** No litigation is pending and, to the best of Owner's knowledge, no litigation or administrative actions are proposed, threatened or anticipated with respect to any matter affecting the Owner's Property. If Owner learns of any litigation or administrative action proposed, threatened or instituted with respect to the Owner's Property, Owner shall give Operator prompt notice thereof.

10.4 **Survival.** The representations and warranties set forth in this Section 10 shall survive the execution and delivery hereof.

11. **Use, Operation and Maintenance.**

11.1 **Exclusive Use by Operator.** Subject to the limitations in Sections 11.3, Operator shall have the exclusive right (i) to use and possess the Operator Property in connection with the Wind Farm and other similar wind-powered electrical power generation projects; (ii) to investigate, inspect, survey, and conduct tests of the Owner's Property, including, but not limited to, meteorological, environmental, archeological and geotechnical tests and studies; (iii) to use and convert all of the wind resources on the Owner's Property; and (iv) to undertake such other activities on the Owner's Property that may be related to the Wind Farm, including, without limitation, the storage of towers, materials and equipment during the installation and construction of the Turbines and other Improvements; development and operation of communications systems; and site tours of the Wind Farm for visitors and other interested parties.

11.2 **No Required Installation or Operation.** Nothing in this Agreement shall be interpreted as imposing on Operator any obligation to install Turbines or other Improvements on the Owner's Property, or to operate the Wind Farm on the Owner's Property. Operator shall have the sole discretion to determine if and when any Turbines and other Improvements may be constructed on Owner's Property, and if and when to commence the operation of the Wind Farm on the Owner's Property.

11.3 **Uses Reserved by Owner.** Owner expressly reserves the right to use the Owner's Property for all other purposes not granted to Operator under this Agreement, including ranching and agricultural uses, and all recreational uses, provided that no such other use interferes in any way with Operator's use of the Operator Property under this Agreement, including the joint use of the roadways now or hereafter located on the Access Right Property.

Owner's reserved rights are further made subject to the following conditions, requirements and limitations:

11.3.1 **Ranching & Agricultural Uses.** Owner and Operator agree to cooperate with each other in a manner that allows Owner to continue the current ranching and agricultural uses of the Owner's Property in a manner that does not unreasonably interfere with Operator's use of the Operator Property.

11.3.2 **Hunting.** If Owner hunts and/or discharges firearms on and near the Operator Property, Owner shall take such precautions as are reasonable to ensure the safety of Operator's site personnel and the protection of Improvements on the Operator Property during and after construction of the Wind Farm.

11.3.3 **Recreational Uses.** Owner may allow Owner's guests to use the Operator Property, except the Turbine and Met Tower Properties, for recreational purposes except at times or under circumstances that adversely affect public health and safety or operation and safety of the Improvements. If Owner uses snowmobiles or other all-terrain vehicles in the vicinity of the Operator Property, it shall take such reasonable precautions so as to ensure the safety of Owner's guests, Operator's site personnel, and the protection of Improvements on the Operator Property during and after construction of the Wind Farm.

11.4 **Permits and Approvals.** Operator shall be responsible, at its sole cost and expense, for obtaining any governmental permits and approvals necessary for the construction and operation of the Wind Farm and the construction and operation of the Improvements, including complying with the provisions of South Dakota's One-Call Notification System, SDCL Chapter 49-7A. Owner shall cooperate with Operator as necessary to obtain any governmental or utility approvals or permits, including, without limitation, signing any applications, provided that Operator shall reimburse Owner for all its reasonable out-of-pocket expenses directly incurred in connection with such cooperation. To the extent permitted by law, Owner hereby waives enforcement of any applicable setback and sideyard requirements and restrictions and any other zoning restrictions pertaining to the amount of land required surrounding Improvements, whether imposed by a government authority or otherwise, applicable to the Wind Farm on the Owner's Property or any such facilities to be placed upon property adjacent to Owner's Property.

11.5 **Compliance with Laws.** Operator shall comply in all material respects with valid laws applicable to the Operator's use of the Owner's Property and the Operator Property. Operator shall have the right, in its sole discretion and at its sole expense, in Operator's name or Owner's name, to contest the validity or applicability to the Owner's Property and the Operator Property of any law, ordinance, statute, order, regulation, property assessment or the like made by any governmental agency or entity. Operator shall control any such contest and Owner shall cooperate with Operator in every reasonable way in such contest, at no out-of-pocket expense to Owner.

11.6 **No Interference.** During the Term of this Agreement, Owner covenants and agrees that neither Owner nor its agents, lessees, invitees, guests, licensees, successors or assigns will (i) interfere with, impair or prohibit the free and complete use and enjoyment by Operator of all rights granted by this Agreement; (ii) take any action which will interfere with or impair the availability, accessibility, flow, frequency, or direction of air and wind over and above the

Owner's Property; (iii) take any action which will in any way interfere with or impair the transmission of electric, electromagnetic or other forms of energy to or from the Owner's Property; or (iv) take any action which will interfere with or impair Operator's access to the Owner's Property and the Operator Property for the purposes specified in this Agreement.

11.7 **Care and Appearance.** Operator, in its exercise of the easement and other rights granted hereunder shall, at all times, maintain the Improvements in a reasonably neat, clean and presentable condition, consistent with its current usage. Operator shall not willfully or negligently damage or destroy the Owner's Property, but if tiles are damaged, Operator will replace tiles and restore drainage to original condition. Operator shall keep the Owner's Property clean and free of debris created by Operator, its contractors, or others brought on to the Owner's Property by Operator. Operator shall not use the Owner's Property for storage, except for materials, construction equipment and vehicles directly associated with construction or maintenance of the Improvements on the Owner's Property or adjacent properties that are part of the Wind Farm.

11.8 **Fences and Gates.** Within a reasonable time following Owner's request, Operator shall repair or replace any fences, gates or cattle guards damaged or removed in connection with Operator's activities on the Owner's Property. Fences removed from the Owner's Property, if replaced, shall be re-built by Operator at its expense in mutually agreeable locations. All fences, gates, and cattle guards that need to be replaced by Operator shall be of similar type and materials to the ones removed. Once completed, all replacement fences, gates and cattle guards shall be owned and maintained by Owner. To minimize the need for temporary fencing, Owner will cooperate with Operator to avoid pasturing animals on or near the Improvements during periods of construction, maintenance or removal activity by Operator.

11.9 **Roadway Maintenance and Repairs.** Operator agrees to maintain and repair all Roadway Improvements located on the Access Easement for the joint use thereof by Operator and Owner for ingress and egress over, across, and along the Access Easement; provided, however, Owner shall reimburse Operator for any costs and expenses incurred by Operator to repair any damage or perform any special maintenance of the roadway caused by Owner or any person using the roadway with Owner's permission, other than Operator.

11.10 **Remediation of Glare and Shadow Flicker.** Operator agrees that should Owner experience problems with glare or shadow flicker in Owner's house associated with the presence of the Turbines on Owner's Property or adjacent properties, Operator will promptly investigate the nature and extent of the problem and the best methods of correcting any problems found to exist. Operator at its expense, with agreement of Owner, will then promptly undertake measures such as tree planting or installation of awnings necessary to mitigate the offending glare or shadow.

12. **Taxes.**

12.1 **Owner's Taxes.** Owner covenants and agrees to pay prior to delinquency all real and personal property and other taxes, general and special assessments, and other charges of every description ("Taxes") levied or assessed against the Owner's Property and all improvements thereon by governmental authorities, other than Operator's Taxes referenced in Section 12.2 (Taxes, excepting Operator's Taxes, "Owner's Taxes").

12.2 **Operator's Taxes.** Subject to timely receipt from Owner of the relevant statement for Taxes pursuant to this Section 12.2, Operator shall pay to Owner prior to delinquency the amount of any increase in the Taxes levied against the Owner's Property attributable to the taxable value of the Operator Property ("**Operator's Taxes**"). Operator shall not be responsible for Taxes attributable to improvements installed by Owner or others on the Owner's Property. Owner shall submit the annual statement for Taxes to Operator within a reasonable time after the date Owner receives the statement from the taxing authority. Operator may elect to have the statement for Taxes sent directly to Operator. In such event, Operator shall pay all Operator's Taxes to the appropriate taxing authority prior to delinquency, and Owner shall pay to Operator Owner's Taxes prior to delinquency (or Operator may pay Owner's Taxes and offset such amount against the Payments). If Operator receives such statement directly, Operator shall submit a copy of the statement for Taxes to Owner within thirty (30) days after the date Operator receives the statement from the taxing authority.

12.3 **Failure to Pay.** In the event either Party fails to pay their share of Taxes prior to delinquency, the other Party shall have the right to pay such Taxes and any accrued penalties or interest, which payments shall increase or be offset against other Payments due under this Agreement.

12.4 **Operator's Right to Contest.** Operator may contest the legal validity or amount of any Operator's Taxes for which it is responsible under this Agreement, and may institute such proceedings as it considers necessary, provided that Operator shall bear all expenses in pursuing such contest or proceeding. With respect to any Taxes which may constitute a lien on the Owner's Property, Operator shall promptly pay such Taxes unless the proceeding in which it contests such Taxes shall operate to prevent or stay the collection of the Taxes so contested or unless Operator removes any such lien by bonding or otherwise. Owner agrees to render to Operator all reasonable assistance in contesting the validity or amount of any such Taxes, including joining in the signing of any reasonable protests or pleading which Operator may deem advisable to file; provided, however, that Operator shall reimburse Owner for its reasonable out-of-pocket expenses, including reasonable attorneys' fees incurred in connection with providing such assistance.

13. **Mortgage of Operator Property.**

13.1 **Right to Mortgage.** Operator may, upon notice to Owner, but without requiring Owner's consent or approval, mortgage, collaterally assign, or otherwise encumber and grant security interests in all or any part of its interest in the Operator Property. These various security interests in all or a part of the Operator Property are collectively referred to as an "**Operator Mortgage**" and holder of such security interest, an "**Operator Mortgagee**." Any Operator Mortgagee shall use the Operator Property only for the uses permitted under this Agreement. Whenever Operator has granted a security interest under this Section 13, it will give Owner notice of the Operator Mortgage (including the name and address of the Operator Mortgagee for notice purposes) to Owner; provided that failure to give this notice shall not constitute a default under this Agreement, but rather shall only have the effect of not binding Owner to provide such Operator Mortgage notice until the Operator and its address is given to Owner.

13.2 **Notice of Default and Opportunity to Cure.** As a precondition to exercising any rights or remedies related to any alleged default by Operator under this Agreement, Owner shall give written notice of the default to each Operator Mortgagee at the same time it delivers notice of default to Operator, specifying in detail the alleged event of default and the required remedy. Each Operator Mortgagee shall have the right to cure any default as Operator, and/or the right to remove any Improvements or other property owned by Operator or such Operator Mortgagee located on the Owner's Property to the same extent as Operator. The cure period for any Operator Mortgagee shall be the later of (i) the end of the Operator cure period; (ii) thirty (30) days after such Operator Mortgagee's receipt of the default notice; or (iii) if applicable, the extended cure period provided for in Section 13.3. Failure by Owner to give an Operator Mortgagee notice of default shall not diminish Owner's rights against Operator, but shall preserve all rights of the Operator Mortgagee to cure any default and to remove any Improvements or other property of Operator or the Operator Mortgagee located on the Owner's Property.

13.3 **Extended Cure Period.** If any default by Operator under this Agreement cannot be cured without the Operator Mortgagee obtaining possession of all or part of the Operator Property, then any such default shall be deemed remedied if an Operator Mortgagee: (i) within sixty (60) days after receiving notice from Owner as set forth in Section 13.2, acquires possession of all or part of the Operator Property, or begins appropriate judicial or nonjudicial proceedings to obtain the same; (ii) diligently prosecutes any such proceedings to completion; and (iii) after gaining possession of all or part of the Operator Property performs all other obligations as and when the same are due in accordance with the terms of this Agreement. If an Operator Mortgagee is prohibited by any court or by operation of any bankruptcy or insolvency laws from commencing or prosecuting the proceedings described above, the sixty (60) day period specified above for commencing proceedings shall be extended for the period of such prohibition.

13.4 **Operator Mortgagee Liability.** Any Operator Mortgagee whose interest in the Operator Property is held solely for security purposes, shall have no obligation or liability under this Agreement unless and until the Operator Mortgagee succeeds to absolute title to the Operator Property and the rights of Operator under this Agreement. An Operator Mortgagee shall be liable to perform obligations under this Agreement only for and during the period it directly holds such absolute title.

13.5 **Certificates & Other Documents.** Owner shall execute any estoppel certificates (certifying as to truthful matters, including without limitation that no default then exists under this Agreement, if such be the case), consents to assignment and non-disturbance agreements as Operator or any Mortgagee may reasonably request from time to time. Owner and Operator shall cooperate in amending this Agreement from time to time to include any provision that may be reasonably requested by Operator or any Operator Mortgagee to implement the provisions contained in this Agreement or to preserve an Operator Mortgagee's security interest.

13.6 **Operator Mortgagee's Right to Enforce Mortgage & Assign.** Each Operator Mortgagee shall have the right, in its sole discretion: (i) to assign its Operator Mortgage; (ii) to enforce its lien and acquire title to all or any portion of the Operator Property by any lawful means; (iii) to take possession of and operate all or any portion of the Operator Property and to perform all obligations to be performed by Operator under this Agreement, or to cause a receiver

to be appointed to do so; and (iv) to acquire all or any portion of the Operator Property by foreclosure or by an assignment in lieu of foreclosure and thereafter, without Owner's consent, to assign or transfer all or any portion of the Operator Property to a third party. Any Operator Mortgagee or other party who acquires Operator's interest in the Operator Property pursuant to foreclosure or assignment in lieu of foreclosure shall not be liable to perform the obligations imposed on Operator by this Agreement which are incurred or accruing after such Operator Mortgagee or other party no longer has ownership or possession of the Operator Property.

13.7 **New Agreement.** If the Operator Property is foreclosed upon or there is an assignment in lieu of foreclosure, or if this Agreement is rejected or disaffirmed pursuant to bankruptcy law or other law affecting creditor's rights and, within ninety (90) days after such event, Operator or any Operator Mortgagee or other purchaser at a foreclosure sale shall have arranged to the reasonable satisfaction of Owner for the payment of all Annual Installment Payments or other charges due and payable by Operator as of the date of such event, then Owner shall execute and deliver to Operator or such Operator Mortgagee or other purchaser at a foreclosure sale, or to a designee of one of these parties, as the case may be, a new agreement ("New Agreement") which (i) shall be for a term equal to the remainder of the Term of this Agreement before giving effect to such rejection or termination; (ii) shall contain the same covenants, agreements, terms, provisions and limitations as this Agreement (except for any requirements that have been fulfilled by Operator or any Operator Mortgagee or other purchaser at a foreclosure sale prior to rejection or termination of this Agreement); and (iii) shall include that portion of the Operator Property in which Operator or such other Operator Mortgagee or other purchaser at a foreclosure sale had an interest on the date of rejection or termination. If more than one Operator Mortgagee makes a written request for a New Agreement pursuant to this provision, the New Agreement shall be delivered to the Operator Mortgagee requesting such New Agreement whose Operator Mortgage has lien priority, and the written request of any other Operator Mortgagee whose lien is subordinate shall be void and of no further force or effect. The provisions of this Section 13.7 shall survive the termination, rejection or disaffirmation of this Agreement and shall continue in full force and effect thereafter to the same extent as if this Section 13.7 were a separate and independent contract made by Owner, Operator and each Operator Mortgagee, and, from the effective date of such termination, rejection or disaffirmation of this Agreement to the date of execution and delivery of such New Agreement, such Operator Mortgagee or other purchaser at a foreclosure sale may use and enjoy the Operator Property without hindrance by Owner or any person claiming by, through or under Owner; provided that all of the conditions for the New Agreement as set forth above are complied with.

13.8 **Operator Mortgagee's Consent to Amendment, Termination or Surrender.** Notwithstanding any provision of this Agreement to the contrary, the Parties agree that so long as any Operator Mortgage remains outstanding, this Agreement shall not be modified or amended, and Owner shall not accept a surrender, cancellation or release of all or any part of the Operator Property from Operator, prior to expiration of the Term of this Agreement, without the prior written consent of the Operator Mortgagee holding such Operator Mortgage. This provision is for the express benefit of and shall be enforceable by each Operator Mortgagee as if it were a party named in this Agreement.

14. **Assignment and Sublease.** Operator shall have the right, without Owner's consent, to sell, convey, lease, grant an easement, or assign all or any portion of the Operator Property, on either an exclusive or a non-exclusive basis, or to grant subleases, co-leases, sub-easements,

licenses or similar rights with respect to the Operator Property (collectively, "Assignment"), to one or more persons or entities (collectively "Assignee"). Each Assignee shall use the Operator Property only for the uses permitted under this Agreement. When Operator makes any Assignment under this Section 14, Operator shall give notice to Owner of such Assignment (including the interest conveyed by the Assignment and address of the Assignee for notice purposes) to Owner; provided Operator's failure to give such notice shall not constitute a default under this Agreement, but rather shall only have the effect of not binding Owner with respect to such assignment or conveyance until such notice is given. Any Assignment by Operator shall release Operator from obligations subject thereof accruing after the date that liability for such obligations is assumed by the Assignee.

15. **Hazardous Materials.**

15.1 **Owner's Covenants Regarding Hazardous Materials.** Owner represents and warrants that, to the best of Owner's knowledge, the Owner's Property is not and has not been in violation of any federal, state or local environmental health or safety laws, statute, ordinance, rule, regulation or requirement ("**Environmental Laws**"), and Owner has not received any notice or other communication from any governmental authorities alleging that the Owner's Property is in violation of any Environmental Laws. "**Hazardous Materials**" shall mean any asbestos containing materials, petroleum, explosives, toxic materials, or substances regulated as hazardous wastes, hazardous materials, hazardous substances, or toxic substances under any federal, state, or local law or regulation. Owner represents and warrants that, except as disclosed to Operator in writing, to the best of Owner's knowledge, no underground storage tanks and no Hazardous Materials are or were located on the Owner's Property during or prior to Owner's ownership of the Owner's Property. Owner shall not violate in a material way any Environmental Law relating to the Owner's Property.

15.2 **Operator's Covenants Regarding Hazardous Materials.** Operator shall, at Operator's sole cost and expense, promptly take removal or remedial action required by Environmental Law with regard to any material violation of any Environmental Law with regard to any Hazardous Materials brought onto the Owner's Property by Operator or its employees, agents, or contractors. Owner shall cooperate with Operator with regard to any scheduling or access to the Owner's Property in connection with any action required hereunder.

15.3 **Operator's Indemnity Regarding Hazardous Materials.** Operator shall indemnify, defend, protect and hold Owner harmless from any liability based on: (i) the release of Hazardous Materials in, on, under or about the Owner's Property caused by Operator or its employees, agents, or contractors, or (ii) the violation by Operator or its employees, agents, or contractors of any Environmental Law. The indemnity obligations set forth herein shall be in addition to those set forth in Section 16, and shall survive termination of this Agreement.

16. **Indemnity.**

16.1 **Indemnity by Operator.** Operator shall defend, indemnify, protect and hold Owner harmless from and against all liabilities, costs, expenses, obligations, losses, damages, claims, including reasonable attorneys' fees (collectively "**Liability**"), resulting from the negligence, willful misconduct, or breach of this Agreement by Operator, its agents, contractors or employees, invitees, licensees and permittees; provided, however, that such Liability is not

due to any negligence, willful misconduct, or breach by Owner, its agents, contractors or employees, invitees, licensees or permittees.

16.2 **Indemnity by Owner.** Owner shall defend, indemnify, protect, and hold Operator harmless from and against all Liability resulting from the negligence, willful misconduct, or breach of this Agreement by Owner, its agents, contractors or employees, invitees, licensees and permittees; provided, however, that such Liability is not due to any negligence, willful misconduct, or breach by Operator, its agents, contractors, employees, invitees, licensees, or permittees.

16.3 **Survival.** The obligations of the Parties under this Section 16 shall survive expiration or other termination of this Agreement.

17. **Confidentiality.** This Agreement includes confidential and proprietary information relating to Operator and the Wind Farm. In addition, from time to time operator may deliver to owner additional confidential and proprietary information relating to the Wind Farm ("**Additional information**"). Subject to any applicable state or federal law, Owner agrees not to provide copies of the Agreement or additional information or disclose the terms of the Agreement or additional information, in whole or in part, to any person or entity, except as expressly authorized in this Section 17. Operator authorizes Owner to provide copies of the Agreement and additional information and disclose the terms thereof to Owner's family, attorney, accountant, financial advisor and any existing or prospective mortgagee, lessee, or purchaser, so long as they likewise agree not to provide copies of the Agreement or additional information or disclose the terms thereof to any unauthorized person or entity.

18. **Default and Remedies.**

18.1 **Operator Payment Default.** If Operator shall fail to pay any amounts set forth in **Exhibit D** which failure continues for more than thirty (30) days from receipt of written notice from Owner that such amount is due, then Operator shall be in default ("**Operator Payment Default**") and Owner shall have the following remedies:

18.1.1 **Collection of Payments.** With or without terminating this Agreement, Owner may file a lawsuit against Operator to collect any unpaid amounts set forth in **Exhibit D** together with interest thereon that accrues during the continuance of the Operator Payment Default, calculated at a rate ("**Default Rate**"), which is the lesser of (i) the prime interest rate at The Chase Manhattan Bank (or its successor) plus two percent (2%) per annum, or (ii) the maximum lawful rate. Owner shall also be entitled to recover all court costs and reasonable attorneys' fees that may be incurred by Owner in collecting such amounts.

18.1.2 **Terminate Agreement.** Owner may not terminate this Agreement because of any Operator Payment Default without first giving Operator written notice of its intention to terminate the Agreement ("**Termination Notice**"), to be effective on a date to be specified by Owner that is at least thirty (30) days after the date of the Termination Notice. If, by the date specified in the Termination Notice, Operator fails to pay the amount required to cure the Operator Payment Default (including interest at the Default Rate that accrues during the continuance of the Operator Payment Default, Owner's termination of this Agreement shall become effective on the date specified in the Termination Notice. Upon such termination, the

Parties shall be relieved of all further duties and obligations under this Agreement, other than (i) the payment of any accrued and unpaid obligations owed by either Party as of the date of termination (including the amount owed by Operator with respect to the Operator Payment Default and interest payable with respect thereto); (ii) the removal of the Improvements by Operator pursuant to Section 8.8; and (iii) any other obligations and liabilities that are expressly stated in this Agreement to survive such termination. Owner's right to terminate this Agreement pursuant to this Section 18.1.2 is subject to and conditioned upon Owner giving any Operator Mortgagee written notice and opportunity to cure the Operator Payment Default as provided in Section 13.2.

18.2 Other Operator Default. The breach by Operator of any provision hereof, other than an Operator Payment Default as set forth in Section 18.1 ("**Other Operator Default**"), may only result in a cause of action by Owner under applicable law and, other than as set forth in this Section 18.2. Owner hereby waives all other rights it may have, in law or in equity, to terminate this Agreement prior to the expiration of the Term. In the event of any such breach by Operator, Owner shall, at least thirty (30) days prior to commencing any cause of action, give written notice of the cause of breach to Operator, and any Operator Mortgagee (of which it has been notified in writing) concurrently, specifying in detail the alleged event of breach and the required remedy; provided, however, that if the nature or extent of the obligation is such that more than thirty (30) days is required, in the exercise of commercially reasonable diligence, for performance of such obligation(s), then the Operator shall not be in default if it commences such performance within such thirty (30) day period and thereafter pursues the same to completion with commercially reasonable diligence. If Operator does not cure or commence curing such breach within thirty (30) days of receipt of notice, the Operator Mortgagee shall have the absolute right to substitute itself for Operator and perform the duties of Operator hereunder for the purposes of curing such breach. Owner expressly consents to such substitution, agrees to accept such performance, and authorizes the Operator Mortgagee (or its employees, agents, representatives or contractors) to enter upon the Owner's Property to complete such performance with all the rights, privileges and obligations of Operator hereunder. Owner may cure any default by Operator after Operator's cure period has expired. If Owner at any time by reason of Operator's default, pays any sum or performs any act that requires the payment of any sum, the sum paid by Owner shall be due immediately from Operator to Owner, together with interest on such sum calculated at the Default Rate.

18.3 Owner Default. Owner shall be in default of this Agreement if it shall fail to meet any of its obligations under the terms of this Agreement and shall not cure such default within thirty (30) days after receiving notice thereof from Operator (or if such default cannot be cured through the exercise of reasonable diligence within such thirty (30) day period, if Owner fails to commence corrective action within such thirty (30) day period and thereafter diligently prosecutes same to completion) ("**Owner Default**"). Upon the occurrence of an Owner Default, Operator shall have the option to pursue any one or more of the following remedies without any further notice or demand whatsoever: (i) terminate this Agreement without being liable for prosecution or any claim of damages therefor; and (ii) pursue any and all other action or remedies that may be available to Operator at law or in equity, including but not limited to all loss or damage which Operator may suffer by reason of a termination of this Agreement and the loss of the value of the Operator Property.

19. Notice.

19.1 **Writing.** All notices given or permitted to be given hereunder shall be in writing.

19.2 **Delivery.** Notice is considered given either (i) when delivered in person to the recipient named below, (ii) three days after deposit in the United States mail in a sealed envelope or container, postage and postal charges prepaid, return receipt requested or certified mail, addressed by name and address to the party or person intended, or (iii) twenty-four (24) hours from proper and timely delivery to an overnight courier service addressed by name and address to the party or person intended as follows:

Notice to Owner:

Telephone: (____) ____-____

Notice to Operator:

Crowned Ridge Wind Energy Center, LLC
700 Universe Boulevard
Juno Beach, FL 33408-2657
Attention: Business Manager
Facsimile: (561) 691-7307

19.3 **Change of Recipient or Address.** Either party may, by notice given at any time or from time to time, require subsequent notices to be given to another individual person, whether a party or an officer or representative, or to a different address, or both. Notices given before actual receipt or notice of change shall not be invalidated by the change.

20. **Miscellaneous Provisions.**

20.1 **Successors & Assigns.** The terms and provisions of this Agreement shall run with the land and be binding on and inure to the benefit of the heirs, successors, assigns and personal representatives of the Parties. Operator in its discretion may authorize other persons or entities to use the Operator Property for the purposes stated in this Agreement.

20.2 **Memorandum.** Simultaneously with the execution of this Agreement, Owner and Operator agree to execute and acknowledge a memorandum of this Agreement satisfactory in form and substance to Operator and Owner. Owner consents to the recordation of the memorandum in the public records of the county where the Owner's Property is located.

20.3 **Entire Agreement.** This Agreement and the attached Exhibits shall constitute the entire agreement between the Parties and supersedes all other prior writings and understandings.

20.4 **Amendments.** This Agreement shall not be amended or modified in any way except by an instrument signed by Owner and Operator and consented to by any Operator Mortgagee. The Parties hereto shall at all times hereafter execute any documents and do any further acts which may be necessary or desirable to carry out the purposes of this Agreement and to give full force and effect to each and all of the provisions hereof.

20.5 **Legal Matters.** This agreement shall be governed by and interpreted in accordance with the then existing laws of the State of South Dakota and the County where the Owner's Property is located shall be considered the proper forum or jurisdiction for any disputes arising in connection with this Agreement. The parties agree to first attempt to settle any dispute arising out of or in connection with this Agreement by good-faith negotiation. If the Parties are unable to resolve amicably any dispute arising out of or in connection with this Agreement, each shall have all remedies available at law or in equity including attorney's fees awarded to the prevailing party. **Each Party waives all right to trial by jury and specifically agrees that trial of suits or causes of action arising out of this Agreement shall be to the Court.** Time is of the essence with regard to the terms and conditions of this Agreement.

20.6 **Severability.** If any term or provision of this Agreement, or the application thereof to any person or circumstance shall, to any extent, be determined by judicial order or decision to be invalid or unenforceable, the remainder of this Agreement or the application of such term or provision to persons or circumstances other than those as to which it is held to be invalid, shall be enforced to the fullest extent permitted by law. In the event it was determined by Operator that the rights of the parties hereto under this Agreement were to become unenforceable due to the effect of Article XVII, Sections 21-24 of the South Dakota Constitution, the parties agree to amend this Agreement or modify the rights granted herein in order to comply with all applicable laws and to grant to Operator the rights to the extent necessary to construct, operate and maintain the Improvements as contemplated herein.

20.7 **Tax Credits.** If under applicable law Operator becomes ineligible for any tax credit, benefit or incentive for alternative energy expenditure established by any local, state or federal government, then, at Operator's option, Owner and Operator shall amend this Agreement or replace it with a different instrument so as to convert Operator's interest in the Operator Property to a substantially similar interest that makes Operator eligible for such tax credit, benefit or incentive, so long as Owner's interests are not impaired.

20.8 **Approvals.** Whenever in this Agreement the approval or consent of either Party is required or contemplated, unless otherwise specified, such approval or consent shall not be unreasonably withheld or delayed.

20.9 **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, and all of which together shall constitute a single instrument.

20.10 **Option to Convert.** During the Term of the Leases and Easements granted herein, Owner grants to Operator the option to convert the Leases herein contained to easements, or the Easements to leases, as determined by Operator in its sole discretion. Operator may exercise such option by giving the Owner thirty (30) days written notice of its intent to exercise such option. The terms and conditions of such easements and/or leases shall be the same as the terms and conditions of the Leases and Easements, including the annual payments as set forth in **Exhibit D** of this Agreement.

[SIGNATURES ON FOLLOWING PAGE]

Owner:

Name: _____

Name: _____

Operator:

Crowned Ridge Wind Energy Center, LLC
a Delaware limited liability company

By: _____
John DiDonato
Vice President

EXHIBIT A-1

Legal Description of Owner's Property

[INSERT LEGAL DESCRIPTION]

HOLDING PAGE FOR EXHIBIT A-2

**Legal Description of Wind Non-Obstruction Easement Property and Description of Wind
Non-Obstruction Easement in Vertical and Horizontal Angles & Legal Description of Real
Property Benefiting from Wind Non-Obstruction Easement
To be Delivered with Option Notice**

HOLDING PAGE FOR EXHIBIT B

Preliminary Lease & Easement Plan
To be Delivered with Option Notice

HOLDING PAGE FOR EXHIBIT C

As Built Lease & Easement Plan

BEFORE THE PUBLIC UTILITIES COMMISSION
STATE OF SOUTH DAKOTA

EXHIBIT I-3

<i>In the Matter of the Application by</i>)	
CROWNED RIDGE WIND II, LLC <i>for a</i>)	Docket EL19-027
<i>Permit of a Wind Energy Facility in</i>)	
<i>Deuel, Grant and Codington Counties</i>)	

APPLICATION FOR PARTY STATUS (CORRECTED)
(Corrected Application of Garry Ehlebracht, Steven Greber, Mary Greber,
Richard Rall, Amy Rall and Laretta Kranz, "Intervenors")

The above named and within identified Intervenors now petition the Public Utilities Commission for allowance of party status in the above-referenced facility permit proceeding, pursuant to the provisions of SDCL § 49-41B-17(3), and ARSD 20:10:22:40, said Intervenors having submitted this corrected request by their counsel, undersigned.

<u>Applicant's Name:</u>	<u>Address:</u>	<u>E-mail:</u>
Garry Ehlebracht	17539 468 th Ave., Goodwin, SD 57238	bean94@hotmail.com
Steven Greber	17165 468 th Ave., Goodwin, SD 57238	smgreber@itctel.com
Mary Greber	17165 468 th Ave., Goodwin, SD 57238	smgreber@itctel.com
Richard Rall	17192 469 th Ave., Goodwin, SD 57238	arall1@hotmail.com
Amy Rall	17192 469 th Ave., Goodwin, SD 57238	arall1@hotmail.com
Laretta Kranz	17553 468 th Ave., Goodwin, SD 57238	N/A

Each of the Intervenors owns the real property at the respective address shown above, and maintains his or her principal residence upon and at such address. Each address is within the boundaries of the proposed "wind energy facility" as has been defined by the wind developer, Crowned Ridge Wind II, LLC.

Each of these identified Intervenors, furthermore, is a petitioner in the case now pending in Circuit Court, Third Judicial Circuit, Deuel County, 19CIV18-000061, *Ehlebracht, et al. vs. Deuel County Planning Commission, sitting as the Deuel County Board of Adjustment, et al.*, contesting, *inter alia*, the power and authority of the Deuel County Planning Commission, sitting as the Deuel County Board of Adjustment, to grant the certain special exception permit that has been referenced in the application now within Docket EL19-027. The pleadings within the identified court file, and all matters of discovery now or hereafter submitted therein, are also relied upon as grounds for the opposition of each Intervenor to the matter now pending in this Docket EL19-027.

The appendices or exhibits presented in support of the sought facility permit reflect that the residences of Intervenor (as coded) are predicted to be affected by the operations of wind turbines (distance to the nearest being shown):

<i>Residence:</i>	<i>Code:</i>	<i>Sound:</i>	<i>Shadow Flicker:</i>	<i>Distance:</i>
Kranz	CR2-D223-NP	42.5	3:04	2,749'
Ehlebracht	CR2-D220-NP	43.6	3:14	2,211'
Rall	CR2-D222-NP	42.0	15:02	2,260'
Greber	CR2-D221-NP	43.1	14:04	2,041'

As fee owners of their respective properties, Intervenor have a statutorily-granted and constitutionally-protected rights to protect and defend their interests; these are rights and interests not to be impaired or taken from them without due process of law, nor if damaged or taken, absent just compensation. Applicant's proposed placement of wind turbines results in sound levels and types of noise (including that which is inaudible) not otherwise present in the current environment.¹ This placement results also in shadow flicker, a phenomenon that does not currently exist upon the properties of Intervenor. Both are negative features, representing a trespass. When taken under color of a county zoning ordinance, the resulting entitlement, license or permit may be referenced as "Trespass Zoning." Under Trespass Zoning, a non-participating owner's residence and surrounding lands may be impaired for habitation, diminished in market value, or rendered unusable for such lawful purposes as might otherwise have pertained under the zoning ordinance – but for the appearance of a wind farm on neighboring properties.

The delegation of the zoning power to the counties by the Legislature does not include any inherent or recognized right to impose recently-developed zoning standards for shadow flicker from wind farms upon those who, like Intervenor, simply wish to be sufficiently removed from any such development so as to avoid direct, negative impacts. In what other zoning application – other than a wind farm CUP – does a non-applicant (such as these Intervenor) end up with an adjudicated result, which can only be seen as having a negative impact upon their adjacent or nearby properties? The zoning power is subject to constitutional limits, and the several counties in question – including Deuel County, in the instance of these Intervenor – have transcended those limits. A proper exercise of zoning power should not result

¹ Witness Lampeter claims infrasound is already present with refrigerators, air conditioners, and washing machines, and also natural sounds, "such as ocean waves." None of those sources – ocean waves in particular – are now a material source of infrasound for the area of Goodwin, quite like 132 newly-planted wind turbines will prove to be, most of which will crank out LFN and infrasound with 116-meter rotors at 90-meter hubs, reaching far above the height of any trees or landscaping. Does this Commission plan to hire an expert to review and challenge Witness Lampeter on any of his claims and professional writings (Exhibit RL-3), keeping in mind this Applicant's parent corporation seems to have commissioned the Lampeter study from 2011; this feature renders the result as much suspect as the property market value study, Appendix L, sponsored by the Office of Energy Efficiency and Renewable Energy of US DOE – the same federal agency that looks to market the widespread use of windpower also looks to clear away ingrained obstacles. The entity now seeking to dismiss infrasound as a risk in its current application (EL19-027) hired Lampeter to study infrasound and LFN in 2011, concluding there is no such risk inside a dwelling that is 1,000 feet from a turbine. Coincidence? We think not. Lampeter's study does not recognize that a certain percentage of the population is more susceptible to LFN, nor does the witness acknowledge studies concluding a risk of LFN annoyance from distances significantly greater than audible noise on the dBA scale. There is a reason wind turbine LFN is seldom regulated by zoning ordinances – Big Wind interests have implored, as ordinances were developed over the past two decades, that noise not heard cannot be harmful or a source of annoyance, and "model wind ordinances," including the one formerly promoted by this Commission, have also omitted use of the dBC (or other) measures. The times seem to be changing, even if not yet in South Dakota.

in an adjudicatory decision, triggered by an application, enabling the land use applicant to conduct a specific economic activity, with measurement of certain (but not all) detriments inflicted upon those neighbors lacking privity with the land use applicant. “You are permitted to discomfort and afflict your neighbors to this extent, or by this measure.” No other form of land use control or power – other than a wind farm CUP – is exercised in this way, with non-applicant neighbors ending up with *less* than they had before the CUP Applicant started the case.

Further, despite the statutory factors outlined in SDCL § 49-41B-22, this Commission has no superior legal standing – not even a Legislative mandate - to impose a state-version of Trespass Zoning upon Intervenor or other non-participants unfortunate enough to be proximate to Applicant’s proposed land use. The author of the expansively written statute (SDCL § 49-41B-22) failed to duly consider the legal, vested rights of nearby property owners, those who are otherwise afflicted by Trespass Zoning (including the reception of negative aspects not regulated by the Deuel County Zoning Ordinance, including Low Frequency Noise and Infrasound).

The proposed adverse use of Intervenor’s collective lands and residences (all in the immediate area of Goodwin) rises to that of a *de facto* servitude upon the fee interests, and for which an easement is required if permitted as a lawful use (contrasted with that of a naked trespass). Whether by terms of a County zoning ordinance, or a Facility Siting Permit authored by this Commission, this agency is walking much too close to an abrupt cliff - a taking or damaging of property interests protected by law, and from property owners claiming the protection of constitutional provisions.

For its part, Applicant has made an effort to clear the path, obviating potential objections such as those now raised by these Intervenor. Some years ago, another affiliate of NextEra Energy Resources, LLC, by the name of “Crowned Ridge Wind Energy Center, LLC,” sent agents scurrying into the neighborhood now about to be inflicted by the overwhelming presence of 132 wind turbines towering over the landscape. The agents carried with them a document entitled “Wind Farm Lease and Easement Agreement.” One of those documents (hereafter referenced as “Lease & Easement”) was left with Intervenor Laretta Kranz for her consideration as potential “Owner.” After the agent was informed by Garry Ehlebracht (Intervenor, speaking at the request of Ms. Kranz) the project involved too many turbines too close to homes, the document was never recovered by the agent. The Lease & Easement, to be sure, is an illuminating proposal, as it reveals how that particular proposed “Operator” – also a subsidiary of NextEra Energy – viewed the need for an easement – not just an easement to place, reach or build upon the turbine site, but also for purposes of afflicting the “Owner” with a wide range of negative aspects arising from trying to live too close to wind turbines.

Applicant and its team of lawyers doubtlessly will claim that undersigned counsel is about to quote from a “confidential” writing, and will move to strike these references from the public record. Intervenor welcome that contest, as Ms. Kranz signed nothing and made no promise to keep *anything* confidential. The entire Lease & Easement in the hands of Ms. Kranz (and now in the hands of her counsel) should be placed of record, and compared to what has presently been used by the current Applicant for the hosting of some 132 wind turbines.

Is this Applicant’s current “Lease & Easement” (by any name) document now of record or in the hands of this Commission? Slapping a “confidential” label on such a document (beyond the landowner compensation features, such being of no interest to this writer) doesn’t

make it so, as the question of how this Applicant – or its predecessors, all of whom rest nicely under the wings and act at the direction of NextEra Energy - views its own intrusions upon the landowners in this rural area should be of direct interest to this Commission. Applicant is employing the “confidential” label to disguise the intention to simply “take” a *de facto* easement over lands for which it has no actual “Lease & Easement,” and in the process, seeks affirmation from this Commission, in the form of a Facility Siting Permit, to underscore that “taking.”

Section 5.2 of the Lease & Easement (as proposed to Ms. Kranz in 2013) reads:

Effects Easement. Owner grants to Operator [Crowned Ridge Wind Energy Center, LLC] a non-exclusive easement for audio, visual, view, light, flicker, noise, shadow, vibration, air turbulence, wake, electromagnetic, electrical and radio frequency interference, and any other effects attributable to the Wind Farm or activity located on the Owner’s Property or on adjacent properties over and across the Owner’s Property (“**Effects Easement**”).

In addition, the Lease & Easement includes a Section 11.10, reading thusly:

Remediation of Glare and Shadow Flicker. Operator [Crowned Ridge Wind Energy Center, LLC] agrees that should Owner experience problems with glare or shadow flicker in Owner’s house associated with the presence of the Turbines on Owner’s Property or adjacent properties, Operator [Crowned Ridge Wind Energy Center, LLC] will promptly investigate the nature and extent of the problem and the best methods of correcting any problems found to exist. Operator [Crowned Ridge Wind Energy Center, LLC] at its expense, with agreement of Owner, will then promptly undertake measures such as tree planting or installation of awnings necessary to mitigate the offending glare or shadow.

Several observations are in order: the Lease & Easement carries an incomplete date in 2013, and it is recognized that Crowned Ridge Wind Energy Center, LLC, though having the identical address in Juno Beach, FL, and was to be signed by a John DiDonato, Vice President, the Applicant here – Crowned Ridge Wind II, LLC – is a different entity, although the affiliation is obvious. What happened between 2013 and the date on which this new entity got rolling? For one thing, County Zoning Ordinances – *Just like that!, as Forrest Gump might marvel* – have uniformly adopted a “shadow flicker” tolerance of 30 hours annually.² As such, having some knowledge of how current or very recent versions of Applicant’s Lease & Agreement forms now read, one can note that, at some point since 2013, Section 11.10 managed to disappear totally, while Section 5.2 remains intact.

² How did that happen, if not from the impetus of the “best practices” report, issued January 2012, entitled “Wind Energy & Wind Park Siting and Zoning Best Practices and Guidance for States,” a project of The National Association of Regulatory Utility Commissioners, commonly called NARUC. This specific report is directed to the Minnesota Public Utilities Commission and was funded, yes, by the U.S. DOE. Interestingly, at 31, the report observes: “A reasonable standard can rely on micro-siting modeling to ensure that shadow flicker will not exceed 30 hours per year or 30 minutes per day at any occupied building. These are the most commonly used guidelines (Lampeter, 2011, pp. 5-14).” Applicant’s “company witness,” Richard Lampeter is thus relied on *directly* for LFN-infrasound and then *indirectly* for shadow flicker guidance, his professional activities being funded either by NextEra Energy or US DOE. The professional views of such a key “company witness” should not be accepted by this Commission without further input from experts not otherwise working fulltime to advance the incipient interests of Big Wind. Bottom line, neither Lampeter’s work, nor NARUC studies or US DOE, have even briefly considered the basic function of state property law – is the easement (such as Section 5.2 of Lease & Easement tellingly suggests) *required* to lawfully emit and dump upon adjoining landowners the deleterious operational effects of wind turbines, or is a Facility Siting Permit (and CUP) a legally sufficient cure for the absence of an Effects Easement? We think not but before rushing along, in keeping with the straight-jacket of the Legislature’s short timetable, it is time to consider that issue.

This Commission requires that this Applicant confirm having a site lease for each proposed turbine installation (such as the “Lease & Easement”). According to the application presented (Witness Tyler Wilhelm), that job is nearly complete, with about five or six sites left to be inked. What this Commission does *not* now require is that a similar document – in the nature of an “effects easement,” along the lines of Section 5.2 – be in place with *each* non-participating landowner; even though the non-participating landowner is not hosting a turbine site, he or she is yet destined to receive various unpleasant attributes of being proximate to one or more sites. Needless to say, an “effects easement” would place the adjacent or nearby landowner in privity with Applicant as to the unpleasantness of wind farm proximity – the easement granted, however, would respond to the servitude sought to be imposed by Applicant.

Two points now bear further mention and consideration by this Commission: – *first*, what does the Applicant deem important (and appropriate) when dealing with “participating landowners,” and, *second*, what, if anything, does state law provide as to the land-based rights of “non-participating landowners” who must continue to live in or near a wind farm?

As to the first point, Section 5.2 of the Lease & Easement speaks for itself – the “Operator” proposes to extract from the proposed “participating landowner” a rather sweeping exoneration from the adverse “effects” of attempting to live a human life too close or proximate to operating wind turbines – whether such “effects” are flowing from turbines on the leased land, or from other sites nearby. Is not this Section 5.2 *exactly* the same easement form now being deployed, with some success, by this Applicant? (Does this Commission know for certain?)

As to the second point, these Intervenor have the unqualified right to protect the interests in their lands (SDCL § 43-2-1), including control as to who – if anyone – may lay a servitude upon their lands. SDCL § 43-13-4 provides: “A servitude can be created only by one who has a vested estate in the servient tenement.” This definition is *not* construed expansively so as to potentially embrace as a “creator,” for example, Deuel County Board of Adjustment (in approving a CUP that results in the casting of shadow flicker on non-participating properties), or the Deuel County Board (when crafting a zoning ordinance that purports to adversely permit such casting), or even this Commission (whenever issuing a facility siting permit that likewise blesses what the County’s Board of Adjustment has done adversely over the protests of non-participating landowners). The concept of “creator” also does not embrace NARUC, US DOE, or even the Applicant itself, who now appears before this Commission for permission, in the form of a Facility Siting Permit, to cast and dump the operational products and hazards of 132 proposed turbines, over the fence and onto non-participating landowners.

Lacking the power to create a servitude upon and over the lands and over the residential properties of Intervenor for Applicant’s benefit (a privilege belonging exclusively to Intervenor), this Commission is now asked nevertheless to provide a *de facto* easement upon and over the lands of Intervenor. This easement would be in favor of those having interests in nearby lands, sites being also possessed by the Applicant (under instruments thought similar to the “Lease & Easement,” with Section 5.2 as previously quoted). SDCL § 43-13-2 defines an easement as including, *inter alia*, “[t]he right of transacting business upon land” (if establishing a collection of 132 wind turbines upon a broad scope of the landscape, including lands close enough to emit sound, LFN, and shadow flicker upon the homes and properties of Intervenor, by virtue of a facility siting permit, isn’t a “right of transacting business upon land,” then what is

it?). The statutory list includes also “[t]he right of receiving air, *light* or heat from or over, or discharging the same upon or over land.” The filtering of available light – given by a setting or rising sun – through and beyond the spinning blades of a wind turbine at the height of 90 meters, extending upward and outward in all directions over the course of 116 meters, with a resulting projection on nearby properties – is called *shadow flicker*. It is also an adverse result succinctly embraced in the “Effects Easement,” referenced earlier, which this Applicant’s predecessor has deployed, and this Applicant is using also, as to participating landowners.

This Commission has no charter to simply dismiss any such “Effects” (as listed in Section 5.2 of Lease & Easement) with a waive of the hand. Does this Commission truly believe that, since the “Effects” of shadow flicker is within (somewhat – although we are perplexed the 30 minutes per day limit has disappeared!) the parameters of NARUC’s siting suggestions (having been helped along by the work of “company witness” Richard Lampeter, professional work funded by that tireless, avid wind promoter, US DOE), *all is well*, and purely within the scope of SDCL § 49-41B-22? The challenge of these Intervenor is based on *property rights*, rights that have not been conferred upon Applicant by any sort of privity. Likewise, the Legislature has afforded this Commission no ostensible charter to tangle with, or to override, Intervenor’s *property rights, concerning servitudes and easements*.

Likewise, Deuel County has been delegated no zoning power to determine that the “effects” arising out of a wind farm development, covered by a CUP (or special exception permit, as Deuel County persists in calling them), are no problem so long as the ordinance-based standard of 30 hours annually is observed. (The “shadow flicker” standard has been borrowed from NARUC’s 2012 study, so in effect, Applicant’s “company witness” Lampeter *also* wrote the essence of the “shadow flicker” standard for Deuel County’s revised zoning ordinance, as adopted in 2017). By affirming that Applicant may henceforth spew and dispose of “shadow flicker” upon the properties of Intervenor, so long as it doesn’t exceed 30 hours annually, this Commission, though not an authorized “creator” of such interests, is placing a servitude on the lands of Intervenor, to their distinct detriment, and for Applicant’s exclusive benefit. The Commission’s Facility Siting Permit, in effect, expressly approving a site-by-site infliction of shadow flicker, becomes a *de facto* easement, which Applicant will use to confirm to all whom inquire as to the purported lawfulness of such use, so clearly adverse to the fee owner’s interests.

Intervenor pause here to briefly remind this Commission of the recent decision of the Supreme Court in *Knick v. Township of Scott*, _____ U.S. _____ (decided June 21, 2019). The underlying facts reflect that Knick is the owner of a 90-acre parcel, with a single-family home, and a pasture used to graze horses and other farm animals. Embraced in that property is a small graveyard where ancestors of Knick’s neighbors are said to be buried. In 2012, Scott Township (Pennsylvania) adopted an ordinance requiring that “[a]ll cemeteries . . . be kept open and accessible to the general public during daylight hours.” The ordinance also authorized officials to enter the land and determine whether a cemetery existed. Knick was cited for violating the ordinance as she had failed to open the cemetery during the day. Knick responded with a suit for declaratory judgment and injunctive relief in state court (the case did not include an inverse condemnation claim); the state court declined to rule on the case, after the township withdrew the citation and agreed to stay further enforcement during the state court proceedings. Knick then filed a claim in federal court, based on 42 U.S.C. § 1983, alleging the township’s ordinance violated the takings clause of the Fifth Amendment, U.S. Constitution. Based on *Williamson County Regional Planning Comm’n v. Hamilton Bank of Johnson City*, 473 U.S. 172

(1985), the federal trial court dismissed Knick's claim for having failed to pursue an inverse condemnation action in state court.

On Knick's appeal, the Third Circuit Court of Appeals, while noting the township's ordinance was "extraordinary and constitutionally suspect," affirmed the district court. The Supreme Court granted certiorari. En route to a ruling in favor of Knick, Chief Justice Roberts, writing for the majority, overruled *Williamson County* as to the requirement of pursuing state litigation before moving to federal court, and concluded that Knick's taking claim was valid:

A property owner may bring a takings claim under § 1983 upon the taking of his property without just compensation by a local government.

We would add this view: the State, through its agencies, whether a local government having delegated zoning powers, or this Commission acting under the breathtaking charter of SDCL § 49-41B-22, is no better empowered to do what *Township of Scott* had ordained as to access for relict cemeteries. It is all a "taking," as to the laying of a servitude and the declaration of an easement. If Applicant cannot produce an "effects easement" as to the lands and properties of Intervenor (or others not yet awake), voluntarily given, so that easement matches servitude, then this Commission would be prudent to require the wind farm boundaries and sites "back off."

In this rush to promote wind development by NextEra and many others, even when such results in close confinement to the properties and homes of those (like Intervenor) who wish not to be part of a so-called wind farm, Deuel County, this Commission, NARUC, US DOE, and others – are all in the process of hoping to impose servitudes upon and across the lands of Intervenor, when, in fact, these governmental entities and associations have no more actual authority to do so than "company witness" Lampeter would have, in his own strength and merit. By taking official action – whether by issuing a CUP that confirms Applicant's "right" to dispose of "shadow flicker" on nearby properties – or in the form of a facility siting permit bearing the signatures of the three Commissioners elected to this state-wide office, the effective outcome is that of an easement, an official document and imprimatur that *all is safe, all is well, you may proceed as proposed!* In all of this function, however, the Commission is actually facilitating an unpermitted, unlawful taking of property rights. Without this essential Facility Siting Permit, bearing the hands of each Commissioner, and the seal of this Commission, Applicant would not be lawfully permitted to even begin work, much less carry out and perform operationally, what it proposes to do as to the properties of each of these Intervenor.

Intervenor would ask the Commission to retain experts (both science-based and as to the legal rights of property owners in South Dakota), capable of offering some counter-balance to the platitudes and assurances of "company witnesses" (such as Lampeter), whose historic input into the fashioning of shadow flicker and other "tolerances" (for non-participating properties) now seem generally accepted by this Commission as being customary, normal and lawful – when in fact, these standards represent a taking of *property rights*. The Township of Scott cannot lawfully ordain that Mrs. Knick must keep her horse pasture open for daytime visits of others (strangers to title and who, like this Applicant, have paid nothing for the privilege) to the small cemetery, without incurring a Takings claim.

Likewise, this Commission should be extremely cautious about confirming Applicant's rights to reach across those property lines (where it now holds site leases, much like the "Lease

& Easement” referenced herein) for the proposed 132 wind turbines, and in the process, be permitted (this is why it is called a *Facility Siting Permit*) to hereafter dump, dispose of and spew “shadow flicker” and all manner of negative features of wind production onto the properties of Intervenor, so long as Applicant wishes to do so. Applicant has paid nothing for that privilege – beyond prosecuting this Facility Siting Permit (and CUP), which then together become the “source” of Applicant’s claim of right and privilege adverse to Intervenor’s fee ownership. But, Intervenor *never* agreed to burden the enjoyment of their own lands in such manner, and neither the County, nor this Commission (and not even the Legislature itself), has the legal right and wherewithal to rule that they must accept this result, whether under SDCL § 49-41B-22 or otherwise.

In their own way, over what seems to be a much more modest proposition (access to a remote, rural cemetery) Mrs. Knick and her lawyers have birthed a revolution, regarding the ingrained land-based rights, so jealously and laboriously guarded by Mrs. Knick, that are *not* for sale, and *neither* to simply be taken by governmental fiat. These Intervenor feel likewise. Their lands are not now subject to an “Effects Easement” as crafted by a NextEra subsidiary, and they are unwilling to accept some substitute, whether crafted by this Commission or Deuel County. These land-based rights, as referenced in this filing, cannot simply be taken, used or damaged, adversely to the fee owner and without permission. This is so even if one marches under the banner of “public interest” or “green energy,” or another soul-stirring flag flown by this Applicant, cheered on by a tumultuous onlooking crowd, while state and local governmental agents issue the permits ostensibly authorizing such an adverse use.

Applicants, as named herein, seek the right to gain party status, and as a consequence thereof, to further appear and participate in this proceeding, whether by and through undersigned counsel, or other counsel who may then appear on their behalf, reserving also the right, as persons having a direct, pecuniary and personal interest in the outcome of this matter, to appear personally, without counsel, as they may hereafter choose and elect to do, as a matter of convenience and privilege. *These premises considered, Intervenor, each of them, pray accordingly.*

Dated at Canton, South Dakota, this 6th day of August, 2019.

Respectfully submitted,

A.J. Swanson
ARVID J. SWANSON, P.C.
27452 482nd Ave.
Canton, SD 57013
605-743-2070

E-mail: aj@ajswanson.com

Attorney for Intervenor Seeking Recognition of Party Status,

GARRY EHLEBRACHT, STEVEN GREBER,
MARY GREBER, RICHARD RALL, AMY
RALL, and LARETTA KRANZ

/s/ A.J. Swanson

A.J. Swanson
State Bar of South Dakota # 1680

BEFORE THE PUBLIC UTILITIES COMMISSION
STATE OF SOUTH DAKOTA

EXHIBIT I-4

IN THE MATTER OF THE APPLICATION OF)
CROWNED RIDGE WIND II, LLC FOR)
WIND ENERGY FACILITY IN) EL19-027
DEUEL, GRANT AND CODINGTON COUNTIES)

AFFIDAVIT OF LARETTA KRANZ
17553 468TH AVE., GOODWIN, SOUTH DAKOTA 57238

State of South Dakota, County of Deuel: ss.

Laretta Kranz, being duly sworn on oath, deposes and says:

1 My name is Laretta Kranz, and my address is noted above. The legal description for
2 this property, in the name of The BRIAN AND LARETTA KRANZ TRUST, is **THE**
3 **SOUTH HALF (INCLUDING THE NORTH HALF OF LOT 1A), LESS VILLAGE**
4 **OF BEMIS, AND LESS DARWIN AND MARY MACK ADDITION, SECTION 20,**
5 **TOWNSHIP 116 NORTH, RANGE 50 WEST OF THE 5TH P.M., DEUEL COUNTY.**
6 This is a parcel of about 268 acres. In addition, the trust owns a number of the lots in and
7 around Bemis.

8 The parcel was purchased by Brian Kranz, and his brother, Ruben, in 1962. I was
9 married to Brian the following year, and in 1973, Ruben conveyed his interests to Brian and
10 me. Brian passed away in September 2015.

11 My home, which we constructed in 1979, is about two and one-half miles south of
12 Goodwin. We also built a number of other new buildings on the farm. I have been informed
13 that my home is now known to Crowned Ridge Wind as receptor CR2-D223-NP.

14 Crowned Ridge did try to get ^{me} us to sign up as a Participating owner. I gave the ^{YK}
15 document to my neighbor, Garry Ehlebracht, for his opinion, and ^I we talked about it with ^{LK}
16 Garry several times. If I had agreed to the lease and easement, I can see that my property and
17 my home would have been entirely open to the "Effects" mentioned in Section 5.2 of that
18 proposal. I did not wish to be a Participant then – and I also don't wish now, as a Non-
19 Participant, to have my home or my land invaded by either the noise or the Shadow Flicker
20 from these proposed wind turbines. My home is said to be 2,749 feet from the nearest

LK

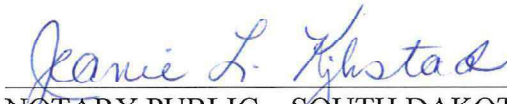
1 turbine, and even at that distance, the experts have predicted I will receive some amount of
2 Shadow Flicker – 3 hours a year - and the noise listed will be greater than what I believe is
3 now the case for our rural area – 42.6 dBA. I've not paid for any sound studies of the sound
4 or noise we now have in our neighborhood, and from what I understand Crowned Ridge has
5 not done that study either. I do know I live in a pretty quiet area, and I am able to sleep at
6 night.

7 As to my land and my home, the added burden of the noise and Shadow Flicker – and
8 the further burden that I believe will come in the form of low frequency noise and infrasound,
9 not regulated by Deuel County's Zoning Ordinance – will not be welcomed here. I recognize
10 that many of my neighbors and friends will have it much worse than I. I am thankful for the
11 friendship and advice of my neighbors, and also that I did not sign the proposed option from
12 Crowned Ridge's agent.

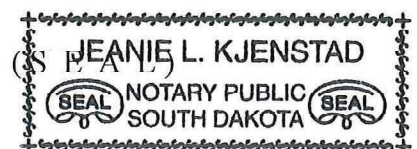
13 I am pretty fussy about who can enter my farm to hunt or do other things, and that's
14 so whether they are looking to stay for 5 hours or just 5 minutes. The County shouldn't take
15 those kinds of decisions out of my hands. But, I also do not think it right that Crowned
16 Ridge, for however long they now wish to operate this wind farm, has been given the right to
17 dump noise and Shadow Flicker on my home and property, because the Zoning Ordinance
18 and our Board of Adjustment says that's now okay. I did not give any easement or a license
19 for this use of my property, and I do not wish to become another one of the many lab animals
20 for this experiment in Deuel County.


LARETTA KRANZ

SUBSCRIBED AND SWORN TO BEFORE ME, A NOTARY PUBLIC IN AND FOR THE
STATE OF SOUTH DAKOTA, BY SAID LARETTA KRANZ, PERSONALLY KNOWN
OR PROVEN TO ME TO BE SUCH PERSON, THE DATE ENTERED BELOW.

Date: Dec 2, 2019 
NOTARY PUBLIC – SOUTH DAKOTA

My Commission Expires: 1/20/2023



Affidavit of Laretta Kranz

 2 -

BEFORE THE PUBLIC UTILITIES COMMISSION
STATE OF SOUTH DAKOTA

EXHIBIT I-5

IN THE MATTER OF THE APPLICATION OF)
CROWNED RIDGE WIND II, LLC FOR)
WIND ENERGY FACILITY IN) EL19-027
DEUEL, GRANT AND CODINGTON COUNTIES)

AFFIDAVIT OF STEVEN GREBER
17165 468TH AVE., GOODWIN, SOUTH DAKOTA 57238

State of South Dakota, County of Codington: ss.

Steven Greber, being duly sworn on oath, deposes and says:

1 My name is Steven Greber and I have lived at the above-referenced address, with my
2 wife, Mary Greber, since early 1995. The legal description for our property is the **SOUTH**
3 **920' OF THE EAST 575' OF THE NORTH HALF OF THE SOUTHEAST QUARTER,**
4 **SECTION 32, TOWNSHIP 117 NORTH, RANGE 50 WEST OF THE 5TH P.M.,**
5 **DEUEL COUNTY.**

6 I am a Licensed Merchant Marine Engineering Officer, and hold a Chief Engineer
7 Motor / Steam / Gas Turbine Vessel of any Horse Power License. I work through the
8 American Maritime Officers Union, sailing out of U.S. and foreign ports. I have sailed on
9 commercial and government-contracted vessels for nearly 30 years, including diverse
10 operations on bulk carriers, tankers and surveillance vessels. I spend perhaps two thirds of
11 each year at this address in Deuel County and the balance on the oceans.

12 I am presently intending to ship out in late November or December for the Far East,
13 on board a U.S. Government vessel, T-AGOS, a mission expected to last for 3 or 4 months.
14 My wife, Mary, usually returns to the Philippines to her family while I am shipboard. Thus,
15 neither of us is presently expected to be available for the February 2020 hearing. I would ask
16 that this affidavit be marked and received by the Commission, with cross-examination by the
17 parties conducted in advance of my impending departure. This affidavit contains the
18 information that I would wish to place before the Commission in this matter; it has been
19 prepared under my direction and at my request by my counsel, and the statements contained
20 herein are true and correct to the best of my knowledge, information and belief.

Steve Greber

1 Since 1995, Mary and I have expended a great deal of money improving this property,
2 including the following projects and efforts:

3 1996: Replaced entire home drain and water piping, as well as laying tile around our home's
4 foundation.

5 1997: Replaced home's windows.

6 1997 to 1999: Remodel home's basement.

7 2000: Added on to existing home's kitchen approximately 140 sq. ft. and remodeled same.

8 2001: Remodeled second floor to have a full second floor with full bath.

9 2001: Had seamless steel siding applied to entire house.

10 2001: Shingles replaced on all house roofs minus kitchen add on.

11 2002: Constructed wooden deck south side of house approximately 452 sq. ft.

12 2003: Concrete pad approximately 12' x 25' poured west of house.

13 2004: Concrete pad approximately 12' x 25' poured west of house.

14 2008 to 2010: Convert old grain building into game room / garage, complete with steel siding.

15 2009: Convert old shed into workshop, complete with steel siding.

16 2015: Replaced all three garage doors and openers in garage.

17 2016: add on lean-to on garage for R/V.

18 2018: Concrete pad approximately 11' x 50' poured west of house to game room / garage.

19 We've also made many improvements to home and property such as bathroom remodels,
20 furnace upgrades, and many more too numerous to list.

21 We have had no contact from Crowned Ridge or anyone else regarding an "Effects
22 Easement" (similar to what was handed to our neighbor, Mrs. Kranz, several years ago), or a
23 lease or anything else. I would assume Crowned Ridge views our parcel as much too small
24 to be of any value to them as a site to be leased, or for some kind of easement. Regardless,
25 this small parcel is of major significance to us as fee simple owners. We are "non-
26 participants" for purposes of applying the Deuel County Zoning Ordinance. As such, the
27 "four times height" setback formula established under Section 1215 of the Ordinance
28 requires a setback of approximately 1,945 feet from our "closest exterior wall."

29 The nearest turbine proposed for our immediate vicinity is 2,041 feet due east of our
30 home, to be constructed on land in the SW1/4 of Section 33. This distance is measured from
31 our east exterior wall, according to my understanding. Our home's east wall is about 110'

Affidavit of Steven Greber

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1 west from our property line on 468th Avenue, so to this extent, Crowned Ridge is using that
2 much of our property to comply with the ordinance's requirements. We have neither agreed
3 to, nor done anything that might allow, Crowned Ridge doing so with our property, being
4 tacked onto the use it is planning to make of our neighbor's property to the east.

5 According to an email from Crowned Ridge's counsel (July 17, 2019), our property is
6 assigned "receptor" code number CR2-D221-NP. As shown in Table C-1 (p. 27), "Crowned
7 Ridge II Shadow Flicker Tabular Results Sorted by Receptor ID," this being part of the
8 document entitled "Final Report Crowned Ridge II Wind Farm Shadow Flicker Study,
9 Codington, Deuel and Grant Counties, SD," dated July 7, 2019, and authored by Jay Haley,
10 Partner of EAPC Wind Energy, the distance from our home to the nearest turbine is 2,041
11 feet. This turbine is located due east, as said. I take this to mean that we – our home – will
12 thus be exposed to Shadow Flicker from the morning sun, at a predicted rate of 14:04
13 annually.

14 In other documents that I have seen, the predicted rate was much higher – somewhere
15 in the neighborhood of 27 hours. Whether the duration is 27 hours or now reduced to "only"
16 14 hours, I wish to say that neither of these planned or potential impacts is acceptable to
17 Mary and me. We view this Shadow Flicker presence (as predicted for our home) as a
18 complete violation of our rights as property owners, including as referenced in SDCL 43-13-
19 2.

20 As my counsel has explained to me, and as I understand our rights to exist under
21 statutes and the South Dakota Constitution, we also have a right to be free from servitudes
22 we did not create being placed upon on our land. If Deuel County Board is going to create a
23 servitude as to Shadow Flicker, or as to noise effects, or if the PUC proposes to set those
24 rights on the part of Crowned Ridge II, then the order under which that right on the part of
25 the Applicant is either void – *or if not void, because the County and this agency has the*
26 *power to do so* – then it is a taking of or infringement upon our purchased rights.

27 I understand that Witness Haley has also predicted the sound received at our home
28 (Receptor CR2-D221-NP) as being 43.1 dB(A), or a claimed "real case sound" of 42.8 dB(A).
29 This sound level – at our exterior wall – also does not account for infrasound or low
30 frequency noise (ILFN) – having spent many years onboard powerful ships, I can attest to the
31 fact that LFN – as given off by large cargo vessels, and also by passing helicopters – is a

Affidavit of Steven Greber

1 significant factor in whether one can sleep, rest or tolerate the sound, which is often more
2 'felt' than heard. I do not welcome this intrusion into our home. I believe the predicted
3 sound pressure level is significantly higher than what is otherwise recommended for
4 optimum sleep opportunities. Sleep disruption on a cargo ship is understandable. I am not
5 prepared to accept these conditions in and around my home.

6 I have been advised by my counsel that by virtue of the special exception permit
7 allowed by Deuel County Board, and then, if this application is *also* approved by the PUC,
8 our ability to enforce our legal rights as property owners (for reasons of annoyance, etc., as
9 mentioned in Chapter 22-10, SDCL), because of a claimed nuisance, whether that be in the
10 nature of Shadow Flicker, or ILFN or sound within the dB(A) scale, will be extremely
11 curtailed, if not entirely thwarted. No one has bargained with us for that result. All we have
12 are these official permits and orders, issued by – or sought from - governmental agencies
13 who do not hold any right, title or interest in our property.

14 We did not purchase this home and acreage to be victimized with the trespassing and
15 total disregard of our property rights by Applicant's IWTs with noise, flicker,
16 electromagnetic waste and the unsightly blight on the landscape that will destroy our
17 property values, and nuisance of a IWT only 2,041 feet nearly directly due east of our home.
18 Sure, Applicant has produced market value studies for real estate, which, according to my
19 understanding, claim to show that residential real estate has *no* provable market value loss. I
20 would suggest that any such market value study be refined to include those that are within the
21 "project boundaries," and which also receive Shadow Flicker, along with an elevated level of
22 sound, and a completely unchecked amount of ILFN from the turbines. I can say for a fact
23 that if these IWTs were present in 1995, or even hinted at, we never would have elected this
24 part of the country as a place to live and raise our family.

25 I also question why I am to have the nearest wind turbine only 2,041 feet (just over
26 the four-times-height requirement) from my home while the good folks in Goodwin get the
27 benefit of a one-mile (5,280 feet) set back, under the Deuel County Zoning Ordinance as last
28 amended in early 2017. It is my understanding that Deuel County does all of the zoning in
29 this district, and that Goodwin is part of our same zoning district. I am advised that the
30 zoning statutes for our state require the regulations in each district be uniform. The homes in
31 Goodwin are no better or more deserving of a reasonable setback from wind turbines than

1 our own home, which itself is just a mile or so outside of Goodwin, to the north. This seems
2 to be another example of zoning regulations or zoning efforts that do not follow the zoning
3 law or zoning power, as delegated to the County.

4 As far as the PUC's jurisdiction is concerned, I understand the agency has now found
5 in other cases – several times – that no evidence (perhaps insufficient evidence is a more apt
6 term) exists that these concerns over IWT proximity, as referenced in my affidavit, will
7 “substantially impair” the health, safety or welfare of Steven and Mary Greber, or of our
8 local community. I continue to believe that the risk exists, no matter what the experts hired
9 by Crowned Ridge might profess.

10 But that said, the PUC should carefully consider also our rights under South Dakota
11 property law, as referenced herein.

12
13 
14 STEVEN GREBER

15
16 SUBSCRIBED AND SWORN TO BEFORE ME, A NOTARY PUBLIC IN AND FOR THE
17 STATE OF SOUTH DAKOTA, BY SAID STEVEN GREBER, PERSONALLY KNOWN
18 OR PROVEN TO ME TO BE SUCH PERSON, THE DATE ENTERED BELOW.

19
20
21 Date: 11-13-19 
22 NOTARY PUBLIC – SOUTH DAKOTA

23
24
25 My Commission Expires: 3-12-24



BEFORE THE PUBLIC UTILITIES COMMISSION
STATE OF SOUTH DAKOTA

EXHIBIT I-6

IN THE MATTER OF THE APPLICATION OF)
CROWNED RIDGE WIND II, LLC FOR)
WIND ENERGY FACILITY IN) EL19-027
DEUEL, GRANT AND CODINGTON COUNTIES)

AFFIDAVIT OF AMY RALL
17192 469TH AVE., GOODWIN, SOUTH DAKOTA 57238

State of South Dakota, County of Deuel: ss.

Amy Rall, being duly sworn on oath, deposes and says:

1 My name is Amy Rall. My husband, Richard Rall, and I purchased this property in
2 October 2010, closing November 1, 2010. The legal description for our property (14 acres)
3 is **LOTS 1, 2, 3, AND 4 OF DAHL SECOND ADDITION, IN THE SOUTHWEST**
4 **QUARTER OF THE SOUTHWEST QUARTER (SW1/4, SW1/4), IN SECTION 34,**
5 **TOWNSHIP 117 NORTH, RANGE 50 WEST OF THE 5TH P.M., DEUEL COUNTY.**

6 Our home is about two miles north and east of Goodwin. Since purchasing the home,
7 we have added many improvements both within and without the home, all at a considerable
8 expense over the purchase price. The value of this home and property is a significant part of
9 our net worth – at least, that would be true prior to this wind farm receiving approval from
10 the County in 2018.

11 We moved to this location from the White area (20787 482nd Ave., White), wanting
12 to move away from the wind turbines proposed to be placed fairly close to our home there.
13 We asked the real estate agent (whose parents owned the property we were purchasing) if she
14 knew anything about turbines being proposed for this Goodwin area, and she indicated “No.”
15 We had made it very clear that we did not wish to be close to wind turbines and this was the
16 reason for our decision to move from the White area. We later learned that she had notarized
17 a great many of the wind leases or options around Goodwin, going back to 2008. As it
18 turned out, the wind farm planned for our area near White was then moved a bit farther north
19 to Toronto.

1 Neither Rich nor I have been contacted by Crowned Ridge or anyone regarding rights
 2 or interests in our property on 469th Ave. I am employed at Tech Ord in Clear Lake, in the
 3 position of Receiving Inspection Lead, and Rich is a detailer and truck driver for Peterson
 4 Motors in Watertown.

5 Our home has been assigned a "receptor" designation or code of CR2-D222NP. The
 6 distance to the nearest turbine is reported to be 2,264 feet, with a predicted noise level of 42.5
 7 (or 40.5 as more recently claimed). Shadow Flicker is estimated at 15 hours, 12 minutes,
 8 most recently revised to 13 hours, 27 minutes. It is my understanding our home will receive
 9 Shadow Flicker from CR11-58 to the southwest, and also CR11-60 to the west. This use of
 10 our home and land for these purposes by Crowned Ridge II is not agreeable to us.

11 Our land and outbuildings have long been used as a retirement place for horses. The
 12 effects of Shadow Flicker would be very difficult, if not impossible, to adjust to, both for
 13 horses and humans.

14 We would like to sell our property and move for a second time to another site – but
 15 with wind turbines now occupying, or proposed for, so much of the countryside, where does
 16 one move to, even assuming that a new owner is willing to tolerate 15 hours of Shadow
 17 Flicker per year? These circumstances, in my opinion, have pretty well destroyed the market
 18 value of our property near Goodwin.

19 As I see it, we have no good options other than needing to stand with our Goodwin
 20 neighbors and fight this permit – and these planned trespasses – based on our rights as
 21 property owners.

Amy Rall
 AMY RALL

SUBSCRIBED AND SWORN TO BEFORE ME, A NOTARY PUBLIC IN AND FOR THE
 STATE OF SOUTH DAKOTA, BY SAID AMY RALL, PERSONALLY KNOWN OR
 PROVEN TO ME TO BE SUCH PERSON, THE DATE ENTERED BELOW.

Date: 11/22/19

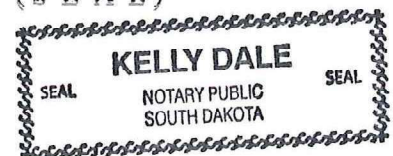
Kelly Dale
 NOTARY PUBLIC – SOUTH DAKOTA

Codington County

My Commission Expires: 10/23/25

(S E A L)

Affidavit of Amy Rall
 - 2 -



BEFORE THE PUBLIC UTILITIES COMMISSION
STATE OF SOUTH DAKOTA

In the Matter of the Application by)
CROWNED RIDGE WIND II, LLC *for a*) Docket EL19-027
Permit of a Wind Energy Facility in)
Deuel, Grant and Codington Counties)

CERTIFICATE OF SERVICE

A true copy of “Witness and Exhibit List of Intervenors Garry Ehlebracht, et al.,” together with a true copy of each exhibit listed therein (being marked Exhibit I-1 to I-6, inclusive), together with a request for the Commission to take official or judicial notice of two published reports identified therein, was transmitted (the date below) by undersigned, as counsel for said Intervenors to each of the following presently appearing on the Commission’s Service List in this matter:

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Executive Director
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Dated at Canton, South Dakota, this 27th day of January 2020.

Respectfully submitted,

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/s/ A.J. Swanson
A.J. Swanson
State Bar of South Dakota # 1680

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GARRY EHLEBRACHT, STEVEN GREBER,
MARY GREBER, RICHARD RALL, AMY
RALL, and LARETTA KRANZ, *Intervenors*